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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

NO. 13 ORIGINAL

STATE OF TEXAS,
Plaintiff

V.

STATE OF NEW JERSEY, ET AL,
Defendants

**MOTION FOR LEAVE TO FILE BILL OF COMPLAINT,
AND COMPLAINT**

WILL WILSON
Attorney General of Texas

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Assistant Attorney General

Courts Building
Austin 11, Texas

ATTORNEYS FOR PLAINTIFF,
The State of Texas

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

NO. _____ ORIGINAL

STATE OF TEXAS,
Plaintiff

V.

STATE OF NEW JERSEY, ET AL,
Defendants

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

The State of Texas, by its Attorney General, respectfully asks leave of the Court to file the Bill of Complaint which is submitted herewith.

WILL WILSON
Attorney General of Texas

HENRY G. BRASWELL
Assistant Attorney General

ATTORNEYS FOR PLAINTIFF,
The State of Texas

STATEMENT IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

A "case" and "controversy" exists between the States of Texas, New Jersey, and Pennsylvania within the meaning of Article III, Section 2, of the United States Constitution in that each of these states is aggressively claiming, and actively asserting the exclusive right to claim, the same intangible property under its respective escheat and/or custodial statutes. These claims are rival and mutually exclusive, threatening to subject the holder of such property, Sun Oil Company, not only to a multiplicity of suits, but to multiple liability for a single debt in violation of the due process of law guaranteed by the Fourteenth Amendment of the United States Constitution. Further, the claims of New Jersey and Pennsylvania constitute an unauthorized invasion of the rights of Texas in and to such property and subject Texas to the threat of immediate and irreparable loss and damage to its property and property rights.

The property involved is approximately Thirty-Seven Thousand, Eight Hundred and Fifty-Three Dollars and Fifty-Three Cents (\$37,853.53) in debts of various amounts and types which Sun Oil Company, a corporation chartered under the laws of New Jersey, but transacting business under certificates of authority in Pennsylvania, Texas, and other states, owes to between 1800 and 2000 different persons whose whereabouts are unknown, and have been unknown, for a sufficient length of time to qualify the subject property for escheat and/or custody under the aforesaid states' respective abandoned property statutes.

Texas asserts that the situs of said property is in Texas for purposes of escheat. The property has been reported by Sun Oil Company to the Treasurer of Texas, pursuant to the Texas escheat statutes, as being personal property subject to escheat under the Texas statutes, and the administra-

tive procedures whereby such property can be adjudged by the Texas courts to be escheated to Texas have been instituted. Texas is authorized by its statutes to proceed to escheat such property now but withholds the institution of such an action in the courts of Texas pending the outcome of this original action.

The State of New Jersey has already instituted a suit in its courts against Sun Oil Company to take "protective custody" of this property with a view toward escheating it. Such suit is pending, having progressed past pre-trial hearing and now being set for a trial on the merits for July 15, 1962. The State of Pennsylvania has served notice on Sun Oil Company that it is also claiming this property under its escheat and/or custodial statutes, and is conducting an audit of such property with a view toward instituting a suit to escheat this property.

There being no other competent forum available to the parties, and there being a clear threat of imminent and irreparable damage and loss to the property and property rights of plaintiff and the defendant, Sun Oil Company, due to the claims which are being asserted by Pennsylvania and New Jersey to the right to escheat such property, it is imperative that this Court exercise its original and exclusive jurisdiction by granting leave to file the instant Complaint and proceeding to determine the rights of these states with respect to the escheat of this property, as well as granting the further relief prayed for in the Complaint.

It is respectfully submitted that the Motion for Leave to File the Complaint should be granted.

WILL WILSON

Attorney General of Texas

HENRY G. BRASWELL

Assistant Attorney General

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961

No. _____ ORIGINAL

STATE OF TEXAS,
Plaintiff

v.

STATE OF NEW JERSEY, ET AL,
Defendants

COMPLAINT

The State of Texas, Plaintiff, by Will Wilson, its Attorney General, with leave of the Court, files this its Bill of Complaint, against the Defendants, the State of New Jersey; Arthur J. Sills, Attorney General of New Jersey; the State of Pennsylvania; David Stahl, Attorney General of Pennsylvania; and Sun Oil Company.

I.

The original jurisdiction of this Court is invoked under the authority of Article III, Section 2, of the Constitution of the United States and 28 U. S. C. A., Section 1251.

II.

The Plaintiff, the State of Texas, acts by and through the Attorney General of Texas, Will Wilson, the official

of the State of Texas who is charged with the duty under the Constitution and laws of the State of Texas of prosecuting escheat suits in behalf of the State of Texas and of representing the State of Texas in civil litigation generally. Said Plaintiff is claiming the property which is the subject of this suit.

III.

The Defendant, the state of New Jersey, acts by and through the Defendant, Arthur J. Sills, Attorney General of New Jersey, the official of the State of New Jersey who is charged with the duty of prosecuting escheat suits in behalf of the State of New Jersey. Said Defendants are claiming the property which is the subject of this suit.

IV.

The Defendant, the State of Pennsylvania, acts by and through David Stahl, the Attorney General of Pennsylvania, the officer of the State of Pennsylvania who is charged with the duty of prosecuting escheat suits in behalf of the State of Pennsylvania. Said Defendants are claiming the property which is the subject of this suit.

V.

The Defendant, Sun Oil Company, is a corporation chartered under the laws of New Jersey, with offices in Pennsylvania and Texas, and actively engaged in business in Texas and other states under certificates of authority from such states to transact business therein.

VI.

States other than New Jersey and Pennsylvania are not named as Defendants herein because the aforementioned states are the only states which, according to Plaintiff's knowl-

edge, are making any claim to the particular property which is the subject of this Complaint. Plaintiff has, nevertheless, mailed a copy of this Complaint (along with a copy of Plaintiff's Motion for Leave) to the Governors and Attorneys General of all states wherein the Defendant, Sun Oil Company, transacts business, and which have abandoned property statutes to-wit: Florida, Idaho, Kentucky, Virginia, California, New Mexico, Louisiana, Oregon, Oklahoma, Utah, Arizona, Washington, Massachusetts, Arkansas, Connecticut, New York, Michigan and North Carolina; in order that any state desiring to assert a claim to said property may seek leave to intervene herein.

VII.

On January 2, 1962, the Defendant, Sun Oil Company, filed in due form with the Treasurer of the State of Texas, pursuant to the provisions of Article 3272a, Title 53, Vernon's Civil Statutes of Texas, a written report of personal property which is held by such company and deemed by such company to be subject to escheat to Texas under the laws of the State of Texas. Article 3272a requires every person holding personal property subject to escheat under the Texas escheat statutes to file a report thereof with the State Treasurer. Said statute defines the term "subject to escheat" as including:

"... personal property presumed to be subject to escheat by the prima facie conclusions contained in Article 3272, including all personal property (1) of which the existence and whereabouts of the owner are unknown and have been unknown to the holder for more than seven (7) years and (2) on which, from the knowledge and records of the holder it appears that no claim or act of ownership has been asserted or exercised during the past seven (7) years and (3) on which no will of the last known owner has been recorded or probated in the county where the property is situated within the past seven (7) years."

Said statute defines the term "personal property" as including but not limited to:

"... money, stocks, bonds and other securities, bills of exchange, claims for money or indebtedness and other written evidences of indebtedness, dividends, deposits, accrued interest, purchase payments, sums payable on certified checks, certificates of membership in a corporation or association, amounts due and payable under the terms of any insurance policy, security deposits, unclaimed refunds and deposits for utility or other services, funds to redeem stocks and bonds, undistributed profits, dividends, or other mineral estates, and all other personal property and increments thereto, whether tangible or intangible, and whether held within this State, or without the State for a person or beneficiary whose last known residence was in this State."

In conformity with the aforesaid Texas statute, the Treasurer of Texas has received and now holds the aforesaid report from the Defendant, Sun Oil Company, and has caused notices to be posted to the persons appearing to be owners of the property so reported, and in May of 1962, the said property shall be deemed abandoned and shall escheat to the State of Texas, whereupon the Treasurer of the State of Texas shall so certify to the Attorney General of Texas, and the Attorney General of Texas shall, unless otherwise requested by this Court, or unless this Court has not acted on this motion and complaint, institute suit in the courts of Texas to judicially determine that such property has escheated to the State of Texas, as required by the aforesaid statute. The said personal property so reported is now being actively claimed by the Treasurer of the State of Texas and the Attorney General of Texas as property subject to escheat exclusively to Texas under the laws of Texas by reason of having been reported by the holder thereof as abandoned personal property held within the State of Texas, or held without the State of Texas for a person whose last known address was in this State. Said property

has its situs in Texas and is subject to the jurisdiction of the courts of Texas.

VIII.

On or about August 3, 1961, the Defendant, the State of New Jersey, by David S. Furman, Attorney General of New Jersey, filed a suit, State of New Jersey, by David S. Furman, Attorney General of the State of New Jersey v. Sun Oil Company, a corporation, Docket Number C-192-61 in the Superior Court of New Jersey, Chancery Division, Mercer County, wherein the State of New Jersey seeks under Article III, Chapter 37, Title 2A, New Jersey Statutes, to compel the Defendant, Sun Oil Company, to deliver to the State Treasurer of New Jersey for safekeeping and ultimate escheat to New Jersey certain property held by the Defendant, Sun Oil Company. Said property includes all of the property reported, as aforesaid, by the Defendant, Sun Oil Company, to the Treasurer of Texas and which Plaintiff, the State of Texas, claims to be subject to escheat to the State of Texas in the courts of Texas under Article 3272a, Title 53, Vernon's Civil Statutes of Texas. In said suit the State of New Jersey further seeks to compel the Defendant, Sun Oil Company, to deliver to the Treasurer of New Jersey other property held by the Defendant, Sun Oil Company, which has not been reported to the Treasurer of Texas and which the State of Texas does not claim. Neither the State of Texas nor any other State except New Jersey is a party to said suit. The Defendant, Sun Oil Company, has filed an answer in said suit asserting, among other defenses, that the property involved in said suit is being claimed by other states under their escheat laws and that any judgment entered in the New Jersey courts would not be binding on such other states and, therefore, as to Sun Oil Company, such judgment would violate the due process clause of the United States Con-

stitution. A pre-trial hearing has been held in said cause and said defense overruled. A trial on the merits is set for July 15, 1962.

IX.

On or about March 27, 1962, the Defendant, Sun Oil Company, notified the Treasurer of the State of Texas of the aforesaid New Jersey suit, and on or about March 30, 1962, the Attorney General of Texas, at the request of the Treasurer of Texas, notified the Defendant, Sun Oil Company, that the State of Texas is asserting a claim to all of the aforesaid property reported by the Defendant, Sun Oil Company, to the Treasurer of Texas. The Defendant Sun Oil Company has advised the New Jersey court and the Attorney General of New Jersey that Texas is claiming part of the property involved in the aforesaid New Jersey suit, namely that property which has been reported to the State of Texas by Defendant Sun Oil Company. The State of New Jersey, nevertheless, persists in prosecuting the aforesaid suit.

X.

The Defendant, the State of Pennsylvania, has notified the Defendant, Sun Oil Company, that Pennsylvania is claiming the aforesaid property reported by Sun Oil Company to the Treasurer of Texas, and has called for an audit of all such property held by the Defendant, Sun Oil Company. The Defendant, the State of Pennsylvania, is claiming in rem jurisdiction to escheat said property, as is the State of Texas and the State of New Jersey. The Attorney General of Pennsylvania has been notified by the Defendant, Sun Oil Company, that Texas is asserting a claim to said property. Pennsylvania, nevertheless, persists in asserting a claim to said property.

XI.

The property which the Defendant, Sun Oil Company, holds and has reported to the Treasurer of Texas, and which Pennsylvania, New Jersey, and Texas are claiming under their respective escheat statutes, is approximately Thirty-Seven Thousand, Eight Hundred Fifty-Three Dollars and Fifty-Three Cents (\$37,853.53) in miscellaneous sums of money owed by the Sun Oil Company to between 1800 and 2000 different persons on:

(1) Uncashed checks in payment of obligations incurred in Texas, which checks were issued in Texas on bank accounts in Texas by the Gulf Coast Division office of said company at Beaumont, Jefferson County, Texas, and by the Southwest Division office of said company at Dallas, Dallas County, Texas, for wages, services, and supplies, and payable to various persons: (a) whose last known address is in Texas; (b) whose last known address is in states other than Texas; and (c) whose last known address is unknown.

(2) Uncashed lease rental checks issued in Texas on bank accounts in Texas by the Gulf Coast Division office of said company in Texas for various persons whose last known address is in Texas.

(3) Unclaimed payments to vendors and others, which obligations were incurred in Texas, and are held for payment by the Gulf Coast Division office and the Southwest Division office of said company in Texas, to various persons: (a) whose last known address is in Texas; (b) whose last known address is in states other than Texas; and (c) whose address is unknown.

(4) Uncashed oil and gas purchase royalty checks issued in Texas on bank accounts in Texas by the Gulf Coast Division office of said company to various persons: (a) whose last known address is in Texas; (b) whose last known address is in states other than Texas; and (c) whose last known address is unknown.

(5) Mineral proceeds reflected by the records of the Gulf Coast Division office of said company in Texas and the Southwest Division office of such company in Texas on production from land and leases in Texas; and held for various persons: (a) whose last known address is in Texas; (b) whose last known address is in other states; and (c) whose last known address is unknown.

(6) Mineral proceeds reflected by the records of the Gulf Coast Division office of said company in Texas and the Southwest Division office of such company in Texas on production from lands and leases in other states for persons: (a) whose last known address is in Texas; (b) whose last known address is in other states; and (c) whose last known address is unknown.

(7) Unclaimed cash dividends on common stock of the Sun Oil Company, which dividends are credited on the books of Sun Oil Company at Philadelphia, Pennsylvania, for persons whose last known address is in Texas,

(8) Unclaimed payments deducted for employees on war bonds, the records of which are now kept at the Philadelphia, Pennsylvania, office of such company, for various persons whose last known address is in Texas.

(9) Uncashed checks issued in Oklahoma, by the Mid-Continent Division office of said company at Tulsa, Oklahoma, to various persons whose last known address is in Texas.

(10) Unclaimed stock scrip certificates of the Sun Oil Company held for persons whose last known address is in Texas.

The debts evidenced, as described above, by (1) uncashed checks for wages, services, and supplies; (2) uncashed lease rental checks; (3) unclaimed payments to vendors and others; (4) unclaimed oil and gas royalty checks; and (5) mineral proceeds from lands and leases in Texas, all arose out of the operations of Sun Oil Company in Texas through its offices in Texas. All company records of these

individual debts were originally made and entered in, and have since been kept in, the said division offices in Texas exclusively.

The debts evidenced, as described above, by (6) mineral proceeds on lands and leases in other states; (7) unclaimed cash dividends on common stock; (8) unclaimed deductions for employees on war bonds; (10) unclaimed stock subscription certificates: and (9) uncashed checks issued to Oklahoma, are believed to have arisen in Texas.

The Plaintiff, the State of Texas, avers that the situs of all the aforesaid property is in Texas and the property is subject to the jurisdiction of the courts of Texas.

The written report of the aforesaid property by Sun Oil Company to the Treasurer of Texas is referred to for purposes of presenting a more detailed description. Said report is not set forth in these pleadings due to its unusual length but is available to the Court and all parties hereto upon request.

XII.

The Defendant, Sun Oil Company, is present in Texas; subject to the jurisdiction of the courts of Texas, and amenable to their process. Said company is now actively engaged in business in Texas and has been so engaged throughout the time the subject debts arose. At all such times, said company has transacted business in Texas under a valid Certificate of Authority from the Secretary of the State of Texas. Said company maintains a designated registered office in Texas and a registered agent for service of process in Texas pursuant to the statutes of Texas governing the operation of foreign corporations in Texas.

XIII.

The Plaintiff, the State of Texas, as opposed to the De-

fendants, the State of New Jersey and the State of Pennsylvania, and any other state or states, has the exclusive power and right to escheat the subject property because the Defendant, Sun Oil Company, is subject to the jurisdiction of the Texas courts and the subject debts have their situs in Texas for purposes of escheat.

XIV.

The Defendant, the State of New Jersey, lacks the power to escheat, and/or take custody of, the said property because all of such property has its situs, for purposes of escheat, outside of the State of New Jersey, the debts having arisen in the course of transactions in other states and being owed to persons whose last known address is in other states.

XV.

The Defendant, the State of Pennsylvania, lacks the power to escheat, and/or take custody of, the said property because all of such property has its situs for purposes of escheat in other states, the debts having arisen out of transactions conducted in other states and being owed to persons whose last known address is in other states.

XVI.

The said intangible personal property claimed by Plaintiff, the State of Texas, is in real, actual and imminent danger of being declared escheated to the State of New Jersey by the New Jersey courts and to the State of Pennsylvania by the Pennsylvania courts without the claim of Texas or any other state to such property having been asserted, heard, or adjudicated by a court of competent jurisdiction. The holder of such property, the Defendant, Sun Oil Com-

pany, is in real, actual and imminent danger of being compelled by the courts of New Jersey to deliver said property to the State of New Jersey and by the courts of Pennsylvania to deliver such property to Pennsylvania without any protection being afforded such holder from the claims of Texas, or other states to this same property. Said company is being subjected to rival and mutually exclusive claims of Texas and New Jersey and Pennsylvania which pose a real, actual, and imminent threat of taking property of said company in contravention of the due process of law guaranteed by the United States Constitution. The exclusive right, title, and interest of Texas in and to this property is in most imminent danger of being lost by the depletion and taking of the subject property by a judgment in the aforesaid New Jersey proceeding. Neither the holder, Sun Oil Company, or the State of Texas can be protected from irreparable injury and loss of property and property rights unless this Court grants the relief sought by this Complaint.

XVII.

The Plaintiff, the State of Texas, is entitled to the opportunity to discover and develop, in proceedings to which all claimant states, as well as any other interested persons or entities, can be made parties, all of the relevant facts and circumstances surrounding the subject property which will prove, or tend to prove, its true situs for purposes of escheat, said proceedings to be conducted by a Special Master appointed by the Supreme Court of the United States, or through such other means as said Court may deem appropriate.

XVIII.

The Plaintiff, the State of Texas, is entitled to the opportunity to proceed to establish before this Court Plain-

tiff's claim to the right and power to escheat the subject property without any interference with said property from the courts or administrative officials of any state pending final action by the Supreme Court of the United States.

XIX.

The Plaintiff, the State of Texas, has no other adequate remedy at law and no remedy whatsoever in any other court.

WHEREFORE, Plaintiff prays:

(1) That this Court take jurisdiction of the parties and subject matter.

(2) That this Court hear and determine the controversy between the parties, either by referring this case to a Master in Chancery, or a Federal District Court, or in such other manner as the Court deems appropriate, for findings of fact and law and recommendations to this Court.

(3) That a temporary injunction be issued restraining the Defendants, the State of New Jersey, the Attorney General of New Jersey, the State of Pennsylvania, and the Attorney General of Pennsylvania, from proceeding with any action now pending, or which may hereafter be instituted, to escheat and/or take custody of said property, pending further orders of this Court.

(4) That a temporary injunction be issued restraining the Defendant, Sun Oil Company, from paying, delivering, or in any manner relinquishing, the said property to the Defendants, or to any other person or entity, pending further orders of this Court.

(5) That upon final adjudication of this suit by this Court the aforesaid temporary injunction referred to in (3) above be made perpetual and permanent.

(6) That a decree be entered adjudging that the Plaintiff, the State of Texas, alone has the power to assert a claim of escheat against the said property and is alone

authorized to proceed, in accordance with the statutes of Texas governing escheat, to obtain a judgment declaring said property escheated to the State of Texas.

(7) That a decree be entered adjudging that neither the State of New Jersey nor the State of Pennsylvania, nor any other state except Texas, has the power to escheat, or to prosecute a claim of escheat against, said property.

(8) That the Plaintiff, the State of Texas, have such other and further relief as this Court may deem proper.

WILL WILSON

Attorney General of Texas

HENRY G. BRASWELL

Assistant Attorney General

COUNSEL FOR PLAINTIFF,

The State of Texas

PROOF OF SERVICE

I, Will Wilson, Attorney General of Texas, one of the attorneys for Plaintiff, the State of Texas, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the — day of —, 1962, I served copies of the foregoing Motion for Leave to File Complaint and Complaint on each of the parties defendant by depositing copies in a United States post office or mail box, as certified mail with air mail postage prepaid, and addressed to:

- (1) Honorable Robert B. Meyner
Governor of New Jersey
State Capitol
Trenton, New Jersey
- (2) Honorable Arthur J. Sills
Attorney General of New Jersey
State Capitol

- Trenton, New Jersey
- (3) Honorable David L. Lawrence
Governor of Pennsylvania
State Capitol
Harrisburg, Pennsylvania
- (3) Honorable David Stahl
Attorney General of Pennsylvania
State Capitol
Harrisburg, Pennsylvania
- (5) Mr. Joseph T. Wilson, Jr.
Treasurer of Sun Oil Company
1608 Walnut Street
Philadelphia 3, Pennsylvania
- (6) Mr. Henry A. Frye
Pepper, Hamilton & Scheetz
Fidelity-Philadelphia Trust Building
Philadelphia 9, Pennsylvania
(It is known to Plaintiff that said person
and firm are attorneys for Sun Oil Com-
pany in relation to this matter.)
- (7) Mr. T. F. Hill
Southland Center
P. O. Box 2880
Dallas 21, Texas
(Said person is Sun Oil Company's reg-
istered agent for service in Texas.)

It is further certified that copies of said Motion and Com-
plaint have been served on the states named in Paragraph
VI of said Complaint by mailing copies by United States
certified air mail prepaid, to the Governors and Attorneys
General of each of such states.

WILL WILSON
Attorney General of Texas

ATTORNEY FOR PLAINTIFF
The State of Texas

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NO. **13** ORIGINAL

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Plaintiff

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Defendants

BRIEF ON MOTION FOR LEAVE TO FILE
BILL OF COMPLAINT

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IN THE
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OCTOBER TERM, 1961

NO. _____ ORIGINAL

STATE OF TEXAS,
Plaintiff

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STATE OF NEW JERSEY, ET AL,
Defendants

BRIEF ON MOTION FOR LEAVE TO FILE
BILL OF COMPLAINT

STATEMENT OF THE CASE

Plaintiff, the State of Texas, seeks to invoke the original jurisdiction of the Supreme Court of the United States under the authority of Section 2, Article III of the Constitution of the United States, and Section 1251, Title 28 of the United States Code because three states—Texas, New Jersey and Pennsylvania are each aggressively asserting the exclusive right and power to escheat the same property, to-wit: approximately Thirty-Seven Thousand, Eight Hundred Fifty-Three Dollars and Fifty-Three Cents (\$37,853.53) composed of various sums of money owed by Sun Oil Company (a New Jersey corporation, transacting business in Pennsylvania and Texas under valid certificates of authority) to more than eighteen hundred (1800) different people whose identity and/or whereabouts have been unknown for a sufficient length of time to qualify the debts for escheat under the respective statutes of each of the three states.

The subject debts owed by Sun Oil Company are for wages, services, supplies, rental and royalty payments, mineral proceeds, cash dividends, deductions from wages for employee war bonds and stock scrip certificates. Texas contends that these debts have their situs in Texas for purposes of escheat inasmuch as all of the debts fall into the category of either having arisen in Texas or being owed to persons whose last known residence and domicile is in Texas, or both.

New Jersey filed a suit in its state courts on August 3, 1961, to force Sun Oil Company to relinquish custody of this property to the State Treasurer of New Jersey, where such property will, after two years, escheat to New Jersey in a summary action. Sun Oil Company is defending against such suit on the ground that the New Jersey courts lack the power to require Sun Oil Company to relinquish the property to New Jersey since other states are claiming this same property and a judgment in the New Jersey courts will not protect Sun Oil Company from the claims of other states to this property. Sun Oil Company's right to due process under the Federal Constitution will be violated, the company contends. The New Jersey trial court overruled this defense on March 26, 1962, at a pre-trial hearing in said cause and set the case for trial on the merits for July 15, 1962.

Pennsylvania notified Sun Oil Company on or about April 1, 1962, that it is claiming this same property under its escheat statutes and has called for an audit of the property.

Texas received from Sun Oil Company on January 2, 1962, a written report of this property certified by the Treasurer of Sun Oil Company as being property subject to escheat under the laws of Texas. Said report was filed pursuant to the requirements of the Texas escheat statute, which statute authorizes the Attorney General to institute a suit to escheat such property in the Texas courts at the

expiration of 120 days from the date the report was received. The Treasurer of Texas has taken the necessary administrative steps upon which to predicate a suit by Texas to escheat the property and such suit is eligible to be brought under the Texas escheat statute during the month of May, 1962, but Texas will withhold any such suit pending disposition of the case at bar by the Supreme Court of the United States.

Texas has notified Sun Oil Company that it is claiming the exclusive right to escheat this property under the Texas escheat statutes. Sun Oil Company has notified the Attorney General of Pennsylvania and the Attorney General of New Jersey, as well as the court of New Jersey where the aforesaid cause is pending, that Texas claims such right. New Jersey and Pennsylvania, nevertheless, each persist in asserting the exclusive right to escheat such property.

The object of the Complaint is to afford all interested parties their full day in court before any state proceeds further toward an escheat of the property and, more particularly, to obtain a final authoritative adjudication of the rights and powers of the respective states with reference to the escheat of this property, it being contended by Plaintiff that the situs of such property is solely in Texas for purposes of escheat, and it being further contended by Plaintiff that all of the facts and circumstances surrounding the property which will prove its situs should be discovered and adduced in a proceeding to which all interested states and persons can be made parties. Plaintiff further prays for injunctive relief to maintain the status quo while this cause is being determined by the Supreme Court of the United States and for permanent injunctions against interference with Texas' claim to this property upon final hearing on the merits.

There being no other competent forum available to the parties, and there being a clear threat of imminent and irreparable damage and loss to the property and constitu-

tional rights of Plaintiff, the State of Texas, and the Defendant, Sun Oil Company, due to the aggressive assertion of mutually exclusive claims by Pennsylvania and New Jersey to the right to escheat such property, it is imperative that this Court exercise its original and exclusive jurisdiction over such cases and controversies by granting leave to file the instant Complaint and proceeding to determine the rights of these states with respect to the escheat of this property, as well as granting the further relief prayed for in the Complaint.

SPECIFICATION OF POINTS

- I. THE COMPLAINT REFLECTS A JUSTICIABLE CASE AND CONTROVERSY OVER WHICH THIS COURT HAS ORIGINAL AND EXCLUSIVE JURISDICTION.**
- II. ALL INDISPENSABLE AND NECESSARY PARTIES ARE BEFORE THE COURT.**
- III. THE STATES ARE THE REAL PARTIES AT INTEREST.**
- IV. THE COMPLAINT PRESENTS A QUESTION OF LAW TO BE DETERMINED SOLELY BY THIS COURT.**
- V. THE INJUNCTIVE RELIEF PRAYED FOR BY PLAINTIFF IS NECESSARY.**
- VI. IT IS IMPERATIVE THAT THE SUPREME COURT ASSERT ITS JURISDICTION.**

ARGUMENT

The jurisdiction of the Supreme Court of the United

States is set forth in the first two clauses of Section 2, Article III, of the Federal Constitution, which provide as follows:

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, under their Authority; . . . to Controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and Citizens of another State; . . .

"In all Cases affecting Ambassadors, other Public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."
(Emphasis supplied)

These Constitutional provisions have been supplemented by the Congress in 28 U.S.C.A., Section 1251, which in part, provides:

"Section 1251. Original Jurisdiction

(a) The Supreme Court shall have original and exclusive jurisdiction of:

(1) All controversies between two or more States;

...

Manifestly the instant Complaint reflects the involvement of parties of the requisite character to invoke the original and exclusive jurisdiction of the Court. The question is whether the Complaint presents a "case" or a "controversy" within the meaning of Section 2, Article III of the Constitution.

I. THE COMPLAINT REFLECTS A JUSTICIABLE CASE AND CONTROVERSY OVER WHICH THE COURT HAS ORIGINAL AND EXCLUSIVE JURISDICTION.

The citation of but one decision suffices to demonstrate conclusively that not only does this Court have original and exclusive jurisdiction to hear and decide this matter, but that it is imperative that such jurisdiction be exercised by this Court: *Western Union Co. v. Pennsylvania*, 368 U.S. 71 (1961).

It is now settled that the proper, and indeed the only, forum to resolve controversies such as the present one is the Supreme Court of the United States.

In *Western Union Co. v. Pennsylvania*, *supra*, the Supreme Court had before it a fact situation identical to the one presented by the instant Complaint in every material respect, and it was there held that the Supreme Court of the United States has original and exclusive jurisdiction of disputes between two or more states over which state has the power to escheat intangible property. The state courts of Pennsylvania, it was ruled, lacked the power to decree an escheat to Pennsylvania of debts owed by Western Union Company since New York was, under the New York statutes, actively asserting the right to escheat the same property. Inasmuch as New York would not be bound by the Pennsylvania judgment, the holder of the property, Western Union, would be subjected by the Pennsylvania judgment to the risk of multiple liability for a single debt, in contravention of due process. The property consisted of undisbursed moneys held by Western Union (a corporation chartered in New York, with its principal place of business in that state, and doing business in all other states) arising out of money orders purchased in Pennsylvania to be transmitted to payees in Pennsylvania and other states.

In view of the decisive effect of the decision on the matter at bar, we take the liberty of quoting *in extenso* from the opinion of this Court in the *Western Union Co.* case.

Mr. Justice Black, speaking for the majority, said, in part (pages 143-145 in 82 Supreme Court Reports):

"The claims of New York are particularly aggressive,

not merely potential, but actual, active and persistent—best shown by the fact that New York has already escheated part of the very funds originally claimed by Pennsylvania. These claims of New York were presented to us in both the brief and oral argument of that State as *amicus curiae*. In presenting its claims New York also called our attention to the potential claims of other States for escheat based on their contacts with the separate phases of the multi-state transactions out of which these unclaimed funds arose, including: The State of residence of the payee, the State of the sender, the State where the money order was delivered, and the State where the fiscal agent on which the money order was drawn is located. Arguments more than merely plausible can doubtless be made to support claims of all these and other states to escheat all or parts of all unclaimed funds held by Western Union. And the large area of the company's business makes it entirely possible that every state may now or later claim a right to participate in these funds. But even if, as seems unlikely, no other state will assert such a claim, the active controversy between New York and Pennsylvania is enough in itself to justify Western Union's contention that to require it to pay this money to Pennsylvania before New York has had its full day in court might force Western Union to pay a single debt more than once and thus take its property without due process of law.

"Our Constitution has wisely provided a way in which controversies between States can be settled without subjecting individuals and companies affected by those controversies to a deprivation of their right to due process of law. Article III, 2 of the Constitution gives this Court original jurisdiction of cases in which a State is a party. The situation here is in all material respects like that which caused us to take jurisdiction in *Texas v. Florida*, 306 U.S. 398. There four states sought to collect death taxes out of an estate. The tax depended upon the domicile of the decedent, and this Court said that 'by the law of each state a decedent can have only a single domicile for purposes of death taxes . . . ' *Id.*, at 408. Thus, there was only one tax due

to only one state. The estate was sufficient to pay the tax of any one state, but the total of the claims of the four states greatly exceeded the net value of the estate. For this reason, as we said, the risk of loss to the state of domicile was real and substantial, unless we exercised our original jurisdiction to avoid 'the risk of loss ensuing from the demands and separate suits of rival claimants to the same debt or legal duty.' *Id.*, at 405. The rival state claimants here, as in *Texas v. Florida*, can invoke our original jurisdiction.

"The rapidly multiplying state escheat laws, originally applying only to land and other tangible things but recently moving into the elusive and wide-ranging field of intangible transactions have presented problems of great importance to the states and persons whose rights will be adversely affected by escheats. This makes it imperative that controversies between different states over their right to escheat intangibles be settled in a forum where all the states that want to do so can present their claims for consideration and final, authoritative determination. Our Court has jurisdiction to do that. Whether and under what circumstances we will exercise our jurisdiction to hear and decide these controversies ourselves in particular cases, and whether we might under some circumstances refer them to United States District Courts, we need not now determine. Cf. *Massachusetts v. Missouri*, 308 U.S. 1, 18-20. Nor need we, at this time, attempt to decide the difficult legal questions presented when many different States claim power to escheat intangibles involved in transactions taking place in part in many states. It will be time enough to consider those complicated problems when all interested States—along with all other claimants—can be afforded a full hearing and a final, authoritative determination. It is plain that Pennsylvania courts, with no power to bring other states before them, cannot give such hearings. They have not done so here; they have not attempted to do so. As a result, their judgments, which cannot, with the assurance that comes only from a full trial with all necessary parties present, protect *Western Union* from having to pay the same single obligation twice, cannot

stand. When this situation developed, the Pennsylvania courts should have dismissed the case.

"..."

The State of Texas seeks by the instant Motion and Complaint to do precisely what the Supreme Court declared appropriate, and indeed necessary, in the *Western Union* case: Give the rival states their "full day in court" before escheating intangibles claimed by more than one state.

Relying upon *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951), the Supreme Court of Pennsylvania had in *Pennsylvania v. Western Union Co.*, 400 Pa. 337, 162 A2d 617 (1960), rejected Western Union's argument that it would be subjected to the risk of double escheat. But on appeal, the Supreme Court of the United States agreed with Western Union. Applying that principle to the present case, it is clear that Sun Oil Company will be denied due process by allowing the courts of New Jersey or Pennsylvania—or for that matter, Texas—to proceed to take custody of and/or escheat the subject debts of Sun Oil Company while other states are vigorously asserting their right to take custody and/or escheat the same debts.

In the present instance the jurisdiction of the courts of Texas, New Jersey, and Pennsylvania to escheat the property purports to be based, as did the jurisdiction of the Pennsylvania and New York courts in the *Western Union Co.* case, on the presence of the property within the state. Article 3272a, Texas Civil Statutes (Vernon's); Chapter 37, Article 3, Section 2A: 37-29, 37-44, New Jersey Statutes; Title 27, Chapter 5, Section 333, Purdon's Pennsylvania Statutes (copies of which statutes appear in the Appendices hereto as Appendices A, B, and C, respectively).

In this connection, Texas' claim is based on Article 3272a, Title 53, Revised Civil Statutes of Texas. This statute became effective as recently as November 7, 1961. It requires every person holding personal property subject to escheat under Article 3272 of Title 53, Revised

Civil Statutes of Texas, 1925 (a copy of which appears in the Appendices hereto as part of Exhibit A) to file a report thereof with the State Treasurer. The terms "person," "personal property," and "subject to escheat" are defined in the Act as follows:

"(a) The term 'person' as used in this Article means any individual, corporation, business association, partnership, governmental or political subdivision or officer, public authority, estate, trust, trustee, officer of a court, liquidator, two (2) or more persons having a joint or common interest, or any other legal, commercial, governmental or political entity, except banks, saving and loan associations, banking organizations or institutions.

"(b) The term 'personal property' includes, but is not limited to, money, stocks, bonds and other securities, bills of exchange, claims for money or indebtedness and other written evidences of indebtedness, dividends, deposits, accrued interest, purchase payments, sums payable on certified checks, certificates of membership in a corporation or association, amounts due and payable under the terms of any insurance policy, security deposits, unclaimed refunds and deposits for utility or other services, funds to redeem stocks and bonds, undistributed profits, dividends, or other interests, production and proceeds from oil, gas and other mineral estates, and all other personal property and increments thereto, whether tangible or intangible, and whether held within this State or without the State for a person or beneficiary whose last known residence was in this State.

"(c) The term 'subject to escheat' shall include personal property presumed to be subject to escheat by the prima facie conclusions contained in Article 3272, including all personal property (1) of which the existence and whereabouts of the owner are unknown and have been unknown to the holder for more than seven (7) years and (2) on which, from the knowledge and records of the holder it appears that no claim or act of ownership has been asserted or exercised during

the past seven (7) years and (3) on which no will of the last known owner has been recorded or probated in the county where the property is situated within the past seven (7) years."

The Courts of Texas have not been called upon to construe this statute, but the Attorney General of Texas has rendered an official opinion thereon, namely Attorney General's Opinion No. WW-1180 (1961), from which we quote as follows:

"The Legislature, in our opinion, intended by this definition of personal property to include all personal property subject to escheat which is held in this state, regardless of the last known residence of the beneficiary or person for whom the property is held, and that held outside the state for a person or beneficiary whose last known residence was in this state."

It is the contention of Texas that all of the property reported by Sun Oil Company to the Treasurer of Texas as being subject to escheat under the statutes of Texas is either "held within the State of Texas" or "without the state for a person or beneficiary whose last known residence was in this state" or both. Property in either category is considered by the Treasurer of Texas and the Attorney General of Texas as having its situs in Texas.

The statute under which New Jersey is proceeding in its suit to acquire this property is Chapter 37, Article 3, Section 2A: 37-29 through 37-44, New Jersey Statutes Annotated (a copy of which appears in the Appendices hereto as Exhibit B). That statute establishes a procedure whereby the state can take into its protective custody certain types of personal property held by corporations organized under the laws of New Jersey. At the expiration of two successive years in such protective custody the state may then escheat the property. New Jersey apparently contends it has in rem jurisdiction to take the subject property into pro-

protective custody by virtue of being the domiciliary state of the corporation.

The applicable Pennsylvania statute provides that: "Whensoever any real or personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property . . . shall escheat to the Commonwealth. . . ." Title 27, Escheats, Chapter 5, Section 333, Purdon's Pennsylvania Statutes Annotated. That statute, along with several other sections under Title 27 which may be utilized by Pennsylvania with regard to the subject property, are set forth in the Appendices hereto as Appendix C.

Here the property is of the very same character as that involved in the *Western Union Co.* case. It consists of numerous debts of the holder corporation, Sun Oil Company, that have in varying degrees arisen out of the corporation's interstate activities, the corporation being domiciled in New Jersey but maintaining its offices in Pennsylvania and transacting business in practically every state in the Union under certificates of authority from the states. In Texas the corporation conducts extensive operations under a certificate of authority through its two regional offices.

This property is being claimed by the domiciliary state (New Jersey), the state wherein the corporation has its central offices (Pennsylvania), and the state wherein the debts arose and are situate (Texas). Are actual, active, persistent, and aggressive claims being made by these states?

The property has been reported by Sun Oil Company to the Treasurer of Texas as being personal property deemed by such holder to be subject to escheat under the Texas statutes.

The Treasurer has proceeded to issue and have posted the notices required by the Texas statute when property is so reported. Save for the instant Motion and Complaint, a suit to escheat this property would be filed in the Texas

courts against Sun Oil Company and the missing owners by the Attorney General of Texas in May of 1962. Further, Texas has notified Sun Oil Company that Texas denies the right of any other state to escheat or take custody of such property and is itself claiming the right to escheat such property. The fact that Texas is aggressively asserting a claim is, in addition, evidenced by the very Motion and Complaint at bar.

Not only has the State of New Jersey actually filed suit in its courts to take custody of the property in order to summarily escheat it, but Sun Oil Company's multiple liability defense has been overruled by the Court and the suit has advanced past a pre-trial hearing, being now set for a trial on the merits on July 15, 1962. Sun Oil Company has notified New Jersey and the New Jersey Trial Court that Texas denies the right of New Jersey to take this property and is claiming it for itself, but the State of New Jersey, nevertheless, persists in asserting its claim to the property.

Further, Sun Oil Company has been notified by the Attorney General of Pennsylvania that Pennsylvania is claiming this property.

Hence, the *Western Union Co.* case does not exhibit any greater or more active, persistent or aggressive assertion of claims by different states to the same intangibles than does the present case. Indeed, the present case presents even stronger reasons why the court has, and must exercise, original jurisdiction.

II. ALL INDISPENSABLE AND NECESSARY PARTIES ARE BEFORE THE COURT.

All of the parties whose presence is indispensable, necessary, or proper for the determination of a case or controversy between these states are properly made parties defendant. In this connection, we take note of the following statement in the *Western Union Co.* case:

"It will be time enough to consider those complicated problems when all of the interested states—along with all other claimants—can be afforded a full hearing and a final authoritative determination."

Here, all of the interested states, along with all other claimants, can be afforded such a hearing and determination. The states in actual contention for the property are made parties defendant, along with the holder of such property. If there are other states desiring to claim the property, they have notice of the proceeding and are at liberty to intervene. If every state which might wish to claim the property—as opposed to having actually asserted a claim to the property—were made a defendant at the outset, we would have to make every state in the Union a defendant without having the slightest notion of whether these other states have any interest at all in the property. To do so, we submit, would be premature, to say the least, and altogether unnecessary.

What of the last known owners and/or their unknown successors in interest? There are over 1800 different individual creditors listed in the report of this property by Sun Oil Company to the Treasurer of Texas. Some have last known addresses and some do not. The fact that these people have not been heard from by the Sun Oil Company nor reached at their last known addresses for many years indicates the futility of attempting to perfect personal service on such persons. If substituted service were attempted, where would publication be made? There is no statute of the United States prescribing service by publication in such a case as this. And, it cannot be said in the present case which state's law is to be followed in making substituted service on the missing persons.

In any event, the thousands of persons who are listed in the report by the Sun Oil Company to the Treasurer of Texas as missing creditors of the Sun Oil Company are

neither necessary nor indispensable parties to this suit. They do not have a joint interest with any of the parties hereto. This is not a suit to escheat and/or take custody of the property. That can be accomplished in a subsequent proceeding against Sun Oil Company and its missing creditors in the state courts. In such later proceeding the missing owners of property, will, it must be presumed, be afforded adequate notice and all other rights of "due process" before there is any declaration of escheat by the state courts.

The relief sought here is neither against nor in behalf of the missing owners. If the Court should grant all of the relief requested by Plaintiff, the missing owners of the subject property would still be the owners of such property.

The only question involved in the present controversy is which one of the states asserting a claim to the right to escheat this property, in fact and in law, possesses such power and right. The unknown owners have no more place in this suit than persons whose lands are affected in a boundary dispute between states. The sole issue is between the states.

Moreover, many of the missing creditors are doubtless residents of Texas. If Texas were to name them as defendants it would run afoul of the rule that the state may not invoke the original jurisdiction of the Supreme Court in a suit against one of its citizens. See *Georgia v. Pennsylvania Railroad Co.*, 324 U.S. 439, 463 (1945). If, in a suit such as this, the last known owners are indispensable or necessary parties, this question can never be resolved by the Supreme Court because the presence of the state's own citizens would defeat the jurisdiction of the Supreme Court every time.

We think the reasoning of this Court in *Arkansas v. Texas*, 346 U.S. 368, 369 (1953) is determinative of the question of whether the missing owners are indispensable parties herein. Arkansas had filed a motion for leave to file a complaint against Texas to enjoin Texas from pros-

ecuting a suit in the Texas courts against a Texas charitable corporation, the William Buchanan Foundation. The Texas suit challenged the Foundation's power to expend its funds in Arkansas and Arkansas alleged in its complaint that Texas was thus wrongfully interfering with the performance of a contract between the Foundation and Arkansas whereby the Foundation had become obligated to expend its funds in Arkansas. This Court said (pp. 369, 370):

"Texas first argues that the William Buchanan Foundation is an indispensable party to the suit. We do not agree. The theory of the complaint is that Texas is interfering without legal justification with Arkansas' contract with a third person. At least since *Lumley v. Gye*, 2 El. & Bl. 216, 118 Eng. Rep. 749 (Q.B. 1853), a cause of action based on that tortious conduct has been recognized. See *Angle v. Chicago, St. P., M & O. R. Co.*, 151 U.S. 1, 13-15; *Bitterman v. Louisville & N.R. Co.*, 207 U.S. 205, 222-223. However appropriate it might be to join the Foundation as a defendant in the case (see *Texas v. Florida*, 306 U.S. 398, 405), the controversy is between Arkansas and Texas—the issue being whether Texas is interfering unlawfully with Arkansas' contract."

Unquestionably, the rights of the charitable foundation would have been affected by any judgment the Supreme Court of the United States could have rendered in response to Arkansas' complaint. However, the controlling fact was, as it is in the present instance, that the controversy is actually between the states. The theory of Texas' Complaint herein is that New Jersey and Pennsylvania are interfering without legal justification with property which has its situs in Texas.

III. THE STATES ARE THE REAL PARTIES AT INTEREST.

Of course, in order to invoke the original jurisdiction of

the Supreme Court on the ground that a state is a party, the state must be the real party at interest and not merely representing the interests of her citizens. *Arkansas v. Texas*, 346 U.S. 368 (1953). There can be no doubt here that Texas, New Jersey and Pennsylvania are the real parties at interest. They are representing themselves not only in form but in substance because the property is not being claimed in behalf of any person or corporation: it is being claimed for the state and will become part of the public funds of the state if escheated or taken into custody.

IV. THE COMPLAINT PRESENTS A QUESTION OF LAW TO BE DETERMINED SOLELY BY THIS COURT.

In *Arkansas v. Texas*, 346 U.S. 368 (1953), this Court continued Arkansas' motion for leave to file a complaint against Texas until the Texas courts could have an opportunity to resolve the controversy. As we have said, Arkansas sought to enjoin Texas from interfering with a Texas charitable corporation's performance of a contract between the corporation and the University of Arkansas. The alleged interference was in the form of a suit by Texas in the courts of Texas challenging the charity's authority, under Texas law, to expend money for the benefit of citizens of other states. The reason assigned by this Court for continuing Arkansas' motion was that the central question presented (i.e., the authority of the Texas charity) was governed by Texas law.

Palpably the central question in the instant controversy (i.e., as between states asserting rival claims to the same property, which state has the power to escheat such property) is not a question of Texas law alone, or New Jersey law alone, but one partaking of the laws of the three states and the powers of one state over another under the Federal Constitution. The state courts cannot speak with authority

on such issues. Our present controversy, moreover, involves the threatened invasion of rights guaranteed by the due process clause of the Federal Constitution, over which the courts of no state have the final say.

A continuance of Texas' motion in the present case would be to allow the very thing the Court in the *Western Union Co. v. Pennsylvania* and *Texas v. Florida* cases was striving to avert—the risk of irreparable damage and loss to the rights and property of the competing states and the taking of property in contravention of due process.

V. THE INJUNCTIVE RELIEF PRAYED FOR BY PLAINTIFF IS NECESSARY.

This Court said in *Texas v. Florida, supra*:

"We do not doubt that when the equity powers of the Court have been invoked it has power in its discretion to give such incidental relief by way of injunction as will make its determination the effective means of avoiding risk of loss to any of the parties by reason of the asserted multiple tax liability."

It may be that the mere adjudication of the rights of the parties will in this instance provide all the relief that the requested permanent injunctive relief would afford. This, of course, is a matter to be determined within the sound discretion of the Court in light of all of the circumstances.

As to the temporary or interlocutory injunctive relief, we submit, however, that unless assurances are given by the defendant states and state officials that they will not further pursue their attempts to escheat and/or gain custody of this property and by the Defendant, Sun Oil Company, that it will not relinquish custody pending final disposition of this suit in the Supreme Court of the United States, the

temporary injunctions prayed for against such Defendants should issue forthwith.

It should be noticed here that the Plaintiff has expressly stated in its Complaint and now reaffirms, that the State of Texas, though authorized by its statutes to do so, will not institute court proceedings in Texas to escheat this property until the Supreme Court of the United States has finally disposed of the matters presented by the subject Motion and Complaint. Further, if this Court should rule against Texas on the merits there will be no need for further orders of the Court to gain compliance by Texas with the judgment of the Court.

VI. IT IS IMPERATIVE THAT THE SUPREME COURT ASSERT ITS JURISDICTION.

It has been determined by this Court that the state courts cannot settle these controversies and that the Supreme Court has the power to do so. The only question remaining is whether the Supreme Court will elect to do so. We cannot imagine the Supreme Court doing anything else other than exercising its power since it has, as a matter of record, already recognized the urgent need for abating the increasing number of conflicts between the states over their powers with regard to escheating intangible property of a multi-state character.

As was stated by way of footnote in the *Western Union Co.* decision:

"The magnitude of the problem involved is illustrated by the fact that, since 1946, at least 19 states have enacted legislation to bring or enlarge the coverage of intangible transactions under their escheat laws."

There followed a list of the 19 states. This enumeration did not include Texas, which had enacted its new abandoned property statute while the *Western Union Co.*

case was being considered. The problem to the states, and all who are affected by these statutes, has become acute.

We submit that the disputes between states evidenced in the *Western Union Co.* case and in the present case are, in part, an outgrowth of *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951) and *Connecticut Mutual Insurance Co. v. Moore*, 333 U.S. 541 (1948). The states, unfortunately, have been lead to believe that escheats are to be allowed on a "first come, first served" basis, and the scramble by state legislatures and other state officials to get their respective state's claims staked first resembles something akin to the California Gold Rush.

In this connection, observe *New Jersey v. American-Hawaiian Steamship Co.*, 29 N. J. Super. 116, 101 A.2d 598 (1953), where the Court said with reference to the escheat of wages earned in New Jersey and payable by a foreign corporation authorized to do business in New Jersey (at pages 608-609):

"It is apparent that New Jersey is not the only state which has contact with the subject matter. The substance of defendants' position is that New Jersey's interest is not such as to exclude the authority of another state to escheat the same property and hence there looms the prospect of double escheat. In fact, New Jersey's claim ultimately to escheat wages earned elsewhere from its domestic corporations as will thus to escheat wages earned here from foreign corporations, postulates a like power in another state to escheat wages earned there from New Jersey corporations and wages earned here from corporations of that other state.

"The United States Supreme Court has not yet formulated a test for determining the respective rights of several states where each has contact with the intangible and each is in a position to effect seizure by personal service of process upon the debtor within its jurisdiction. In *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541, 68 S. Ct. 682, 92 L. Ed. 863

(1948), it was held that New York could act with respect to proceeds of insurance policies issued by a foreign corporation for delivery in New York on lives of persons resident in New York at the time of delivery. And in the Standard Oil case (State, by Parsons v. Standard Oil Co.), (5 N. J. 281, 74 A.2d 565 (1950); affirmed 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951) the possibility of a superior claim in another state was held not to invalidate the escheat by New Jersey. This seems necessarily to follow from the conclusion that although the debtor was entitled to the protection of the full faith and credit clause, yet another state was nonetheless free to assert its claim against the escheating state in the Federal Supreme Court. 341 U.S. at page 443, 71 S. Ct. 822, 95 L. Ed. 1078.

"Hence New Jersey's right to escheat does not depend upon a nice weighing of the respective contacts of this and another state. New Jersey's contact being substantial, its power to escheat the property as against defendants seems clear, albeit that in a later proceeding between contending states superiority of claim may be found in another state.

"Moreover, it cannot be assumed that a mere superiority of interest will carry an exclusive right to the property. The final solution may be an equitable prorating between or among the interested states. And further, it may be that the state which acts first will prevail. Unseemly as a race among states may be, it is not uncommon for the law to reward the vigilant and this rule may here apply even though its usual application occurs between private litigants . . ."

This might be termed "the devil take the hindmost" theory of escheat. Its effects are to be seen in the fact that the New Jersey courts hold that New Jersey has the power to escheat unclaimed dividends of a New Jersey corporation payable to stockholders whose last known addresses are in other states, *New Jersey v. American Sugar Refining Co.*, 20 N. J. 286, 119 A.2d 767 (1956), and unclaimed dividends

of a foreign corporation payable to stockholders whose last known addresses are in New Jersey. *New Jersey v. F. W. Woolworth Co.*, 45 N. J. Super. 259, 132 T.2d 550 (1957).

Indeed, such a race is "unseemly", in our view, and it can serve no purpose except to breed chaos and confusion not only in an important area of the law but in the relations of the states.

An order of priority to be observed by states pressing conflicting escheat claims against the same intangibles must be established before it will ever become safe for the debtor to relinquish to any one state the moneys owed on debts arising out of the interstate activities of the debtor. Also, the establishment of definite and authoritative standards by which the states can be governed in asserting their escheat powers with regard to persons and property connected with other states is absolutely essential to peace and good order in the relationships of the states under our federal system. The present Motion and Complaint afford this Court the opportunity, and, moreover, the obligation, to meet this need.

CONCLUSION

The Complaint which Texas asks leave to file presents a grinding collision of interests of the states and a consequent threat of irreparable damage to the property and constitutional rights of the stakeholder, as well as to those of the rival states, which only the Supreme Court of the United States can remedy. Therefore, in conformity with the high purpose of the powers conferred on this Court by Section 2, Clause 2, Article III of the Constitution and the traditional role of this Court as sole arbiter of disputes which, but for the federal system, would be the subject of diplomatic adjustment between the states, this Court should exercise its authority to hear and determine this question of paramount interest to the states.

Respectfully submitted,

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PROOF OF SERVICE

I, Will Wilson, Attorney General of Texas, one of the attorneys for Plaintiff, the State of Texas, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the — day of ———, 1962, I served copies of the foregoing Brief in Support of Motion for Leave to File Complaint, on each of the parties defendant by depositing copies in a United States post office or mail box, as certified mail with air mail postage prepaid, and addressed to:

- (1) Honorable Robert B. Meyner
Governor of New Jersey
State Capitol
Trenton, New Jersey
- (2) Honorable Arthur J. Sills
Attorney General of New Jersey
State Capitol
Trenton, New Jersey
- (3) Honorable David L. Lawrence
Governor of Pennsylvania
State Capitol
Harrisburg, Pennsylvania
- (3) Honorable David Stahl
Attorney General of Pennsylvania
State Capitol
Harrisburg, Pennsylvania

- (5) Mr. Joseph T. Wilson, Jr.
Treasurer of Sun Oil Company
1608 Walnut Street
Philadelphia 3, Pennsylvania
- (6) Mr. Henry A. Frye
Pepper, Hamilton & Scheetz
Fidelity-Philadelphia Trust Building
Philadelphia 9, Pennsylvania
(It is known to Plaintiff that said person
and firm are attorneys for Sun Oil Com-
pany in relation to this matter.)
- (7) Mr. T. F. Hill
Southland Center
P. O. Box 2880
Dallas 21, Texas
(Said person is Sun Oil Company's reg-
istered agent for service in Texas.)

It is further certified that copies of said Brief have been served on the states named in Paragraph VI of said Complaint by mailing copies by United States certified air mail prepaid, to the Governors and Attorneys General of each of such states.

WILL WILSON
Attorney General of Texas

ATTORNEY FOR PLAINTIFF,
The State of Texas

APPENDICES

APPENDIX A

PERTINENT TEXAS STATUTES

Article 3272. *When estates shall escheat.*—If any person die seized of any real estate or possessed of any personal estates, without any devise thereof, and having no heirs, or where the owner of any real or personal estates shall be absent for the term of seven years, and is not known to exist, leaving no heirs, or devisee of his estates, such estate shall escheat to and vest in the State. Where no will is recorded or probated in the county where such property is situated within seven years after the death of the owner it shall be prima facie evidence that there was no will, and where no lawful claim is asserted to, or lawful acts of ownership exercised in, such property for the period of seven years, and this has been proved to the satisfaction of the court, it shall be prima facie evidence of the death of the owner without heirs. Any one paying taxes to the State on such property, either personally or through an agent, shall be held to be exercising lawful acts of ownership in such property within the meaning of this title, and shall not be concluded by any judgment, unless he be made a party by personal service of citation, to such escheat proceedings, if a resident of this State, and his address can be secured by reasonable diligence, but, if he be a non-resident of the State or can not be found, the person service of citation shall be made upon any agent of such claimant, if such agent, by the use of reasonable diligence, can be found; such diligence to include an investigation of the records of the office and inquiry of the tax collector and tax assessor of the county in which the property sought to be escheated is situated.

Article 3272a, Personal Property Subject to Escheat

Report by holder of personal property.

"Section 1. Every person holding personal property sub-

ject to escheat under Article 3272 of Title 53, Revised Civil Statutes of Texas, 1925, at the time of the effective date of this Act, shall, within sixty (60) days thereafter, file a report thereof with the State Treasurer, as specified in section 2 of this Article. Every person who holds personal property which becomes subject to escheat under Article 3272 after the effective date of this Act, shall, within sixty (60) days thereafter, file a report thereof with the State Treasurer, as specified in Section 2 of this Article; provided that after one report has been made under this Article by any person, subsequent reports by such person may be made on an annual basis on or before May 1st of each year.

"(a) The term 'person' as used in this Article means any individual, corporation, business association, partnership, governmental or political subdivision or officer, public authority, estate, trust, trustee, officer of a court, liquidator, two (2) or more persons having a joint or common interest, or any other legal, commercial, governmental or political entity, except banks, savings and loan associations, banking organizations or institutions.

"(b) The term 'personal property' includes, but is not limited to, money, stocks, bonds and other securities, bills of exchange, claims for money or indebtedness and other written evidences of indebtedness, dividends, deposits, accrued interest, purchase payments, sums payable on certified checks, certificates of membership in a corporation or association, amounts due and payable under the terms of any insurance policy, security deposits, unclaimed refunds and deposits for utility or other services, funds to redeem stocks and bonds, undistributed profit, dividends, or other interests, production and proceeds from oil, gas and other mineral estates, and all other personal property and increments thereto, whether tangible or intangible, and whether held within this State, or without the State for

a person or beneficiary whose last known residence was in this State.

"(c) The term 'subject to escheat' shall include personal property presumed to be subject to escheat by the prima facie conclusions contained in Article 3272, including all personal property (1) of which the existence and whereabouts of the owner are unknown and have been unknown to the holder for more than seven (7) years and (2) on which, from the knowledge and records of the holder it appears that no claim or act of ownership has been asserted or exercised during the past seven (7) years and (3) on which no will of the last known owner has been recorded or probated in the county where the property is situated within the past seven (7) years.

"Section 2. Form of Report. The report shall be prepared and returned in triplicate, verified under oath, and shall include the following:

"(a) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of the property reported; or the name and address, if known, of any person who may be entitled to such property; together with a brief description of the property, which in the case of deposits, shall disclose the total balance. If any deductions have been made therefrom by the holder for service, maintenance, or other charges, they shall be disclosed unless such deductions have been fully restored in the total amount reported as provided in subsection (d) below.

"(b) In case of unclaimed funds of life insurance corporations, the full name of the insured beneficiary or annuitant and his last known address according to the life insurance corporation's records.

"(c) In the case of mineral proceeds, a list of all credits grouped as to the counties from which the credited proceeds were derived, including credits which have theretofore been charged off or disposed of in any manner except

by payment to the owner thereof; giving the name and last known address of the owner; the fractional mineral interest of the owner; description and location of the land or lease from which the oil, gas, or mineral was produced; the name of the person, firm or corporation who operated the oil or gas well or mine; the period of time during which such proceeds accumulated and the price for which such oil, gas, or other mineral was sold, each such several ownerships to be given an identifying number. The nature and identifying number, if any, or description of the property, and the amount appearing from the records to be due, except that items of value under Ten Dollars (\$10) each may be reported in aggregate;

"(d) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property. Since the State upon escheat is entitled to all rights of the former owner, in the case of dormant deposits or accounts on which deductions for service, maintenance, or other charges would be restored under the policy or procedures of the holder upon request by the owner, such deposits or accounts shall be reported and shall be subject to escheat hereunder in the same amount to which the former owner would be entitled upon such request; and

(e) Other information which may be prescribed by rule of the State Treasurer as necessary for the administration of this Article.

"(f) The verification under oath at the conclusion of the report shall include the following language:

"The foregoing report contains a full and complete list of all personal property held by the undersigned for which, from the knowledge and records of the undersigned, it appears that the existence and whereabouts of the owner are unknown and have been unknown for more than seven (7) years and on which no claim or act of ownership has been asserted or exercised during the past seven (7) years and

on which no will of the last known owner has been recorded or probated in the county where the property is situated within the past seven (7) years.'

"(a) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

"Section 3. Notice and Publication of Lists of Abandoned Property.

'a) The name, if known, and last known address, if any, reports specified in Section 2 are received, the State Treasurer shall mail a notice thereof, as hereinafter described, to the Sheriff of the county of the domicile or principal place of business of the holder so reporting, and in cases involving more than Fifty Dollars (\$50), to the Sheriff of the county of the last known residence of the owner if it is different from the county of the holder. The notice to the Sheriff shall be entitled 'Notice of Names of Persons Appearing to be Owners of Abandoned Property,' and shall contain:

"(1) The names in alphabetical order and the last known addresses, if any, of persons listed in the report and entitled to notice as hereinbefore specified; and

"(2) A statement that information concerning the amount and description of the property and the name and address of the holder may be obtained by any persons possessing or claiming an interest in the property by addressing an inquiry to the holder so reporting. Within ten (10) days after receipt of said notice, it shall be the duty of the Sheriff to post it on the courthouse door or the courthouse bulletin board, where it shall remain posted for a period of not less than thirty (30) days. Thereafter the Sheriff shall return the notice to the State Treasurer with his certificate showing the date and time of posting required by this Section.

"Section 4. Determination of Escheat.

"(a) All personal property reported under the provisions of this Article remaining unclaimed at the expiration of one hundred and twenty (120) days from the date upon which the report by the holder of such property was received by the State Treasurer, shall be deemed to be abandoned, and shall escheat to, and the title thereto vest in, the State of Texas, and the State Treasurer shall so certify to the Attorney General.

"(b) The Attorney General shall immediately institute an action in a District Court of the county in which the holder resides or is domiciled to judicially determine that such property has escheated to the State. The suit shall be brought as a class action, and may include the property reported by more than one holder from the same or other counties, and the sworn petition shall state that the action is brought by the State of Texas upon the relation of the State Treasurer by the Attorney General for the purpose of escheating and vesting the title in the State of Texas of the property therein described, stating the description of the property which has escheated to the State, the name of the person or holder possessed thereof and the names of the person or persons claiming, or last known to have claimed, such property, if any such names are known, all of which information shall be separately listed in parallel columns, and the facts and circumstances in consequence of which such property is claimed to have escheated, praying that such property be escheated, and the title thereto vested in the State of Texas. The petition shall not be subject to objections as to the misjoinder of parties or misjoinder of causes of action.

"(c) The Clerk of the Court in which such suit is filed shall issue citation as in other civil cases, which shall be styled, 'The State of Texas,' and shall be directed to the person or holder named in the petition as being possessed of the property described in said petition, which citation need not be accompanied by a copy of the original petition

filed in the suit, but which shall state concisely the nature of the suit, a description of the property possessed by the person or holder to whom the citation is directed, and the name of the person or persons claiming, or last known to have claimed, such property as set forth in the petition, together with the facts and circumstances in consequence of which such property is claimed to have been escheated, and the prayer contained in the petition.

"(d) The Clerk of the Court in which such suit is filed shall also issue citation which shall be styled, 'The State of Texas,' and shall be directed to all persons interested in, claiming, or asserting an interest in the abandoned property, which description of such property, together with the name of the last holder thereof and the names of the person or persons claiming, or last known to have claimed, such property, shall be listed as described in the petition, to appear and answer as provided in the Texas Rules of Civil Procedure, which citation shall be published in accordance with Rules 114, 116, 117, and 118, Texas Rules of Civil Procedure, except that such citation shall be published only once at least twenty-eight (28) days before the return day of the citation, and except as such rules are further herein modified. The costs of publication shall be paid by the State Treasurer at the rate set out in Article 29, Revised Civil Statutes. Any person claiming an interest in such abandoned property, whether such person is or is not specifically named in the petition, may appear and answer in such proceedings as in other civil suits.

"(e) All actions brought under this Section shall be governed by the procedure provided in the Texas Rules of Civil Procedure relating to class actions, unless otherwise provided in this Article.

"(f) The sworn reports filed with the State Treasurer in accordance with Section 2 of this Article shall, when offered in evidence, constitute prima facie evidence that the property set forth therein has no owner and has escheated

to the State, both under the provisions of this Article and Article 3272 of this Title, unless the person or claimant to the property set forth and described in such report shall file a written denial, under oath, denying that such property has no owner and has escheated to the State, and asserting a claim and proof of ownership thereto. In the absence of such a sworn plea, the sworn report shall be received in evidence as conclusive proof that the property set forth and described in such report has no owner and has escheated to the State, both under the provisions of this Article and Article 3272 of this Title.

"(g) If it appears to the Court that the property described in the petition has been actually abandoned, and that there is no person entitled to it, judgment shall be rendered declaring such property escheated and vesting the title thereto in the State of Texas. The judgment shall also direct the holder of the property so described, which has been actually abandoned and escheated and the title thereto vested in the State, to deliver such property immediately to the State Treasurer. If no person or claimant to any property described in the petition shall appear and answer within the time provided for entering such appearance and answer by the Texas Rules of Civil Procedure, the Court shall render judgment by default as to such property in favor of the State of Texas. If the Court should find that such property has not been actually abandoned and therefore should not be escheated and the title thereto vested in the State of Texas, and that the title to such property should vest in the person or persons claiming the title to or an interest in such property, the Court shall direct such property to be delivered to the person or persons lawfully entitled to possession thereof. Any person who has entered an appearance in the trial of such cause, and the Attorney General on behalf of the State, shall have the right to prosecute an appeal from the judgment of the trial court

as provided by the Texas Rules of Civil Procedure. No appeal bond shall be required on an appeal by the State of Texas.

"(h) After the judgment of the Court vesting the title to such property in the State of Texas has become final, the Attorney General shall so certify to the State Treasurer. When such certification has been received by the State Treasurer and the property which has been escheated and the title thereto vested in the State of Texas under such judgment has been delivered to the State Treasurer in accordance with the mandate contained in such judgment, the State Treasurer shall immediately place the sums of money so escheated to the State of Texas in the State Treasury to the credit of the General Fund, subject to the provisions of Section 14 of this Article. Where the title to intangible personal property other than money has been adjudged to be vested in the State of Texas, and such property has been sold as provided in Section 5 hereof, the State Treasurer shall deposit the proceeds received from the sale of such intangible personal property in the State Treasury to the credit of the General Fund. After delivery of the property to the State Treasurer, the holder thereof shall be relieved of all liability therefor to any person who may later assert a claim thereto.

"Section 5. Sale of Abandoned Property.

"Section 6. Claim of Interest in Abandoned Money and Intangible Personal Property Escheated to the State.

"Section 7. Determination of Claims.

"Section 8. Judicial Action Upon Determination of Claims.

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"Section 10. Reciprocity for Property Presumed Abandoned or Escheated Under the Laws of Another State. If specific property which is subject to the provisions of this Article and is held for or owed or distributable to an owner whose last known address is in another State by a holder who is subject to the jurisdiction of that State, the specific property is not presumed abandoned in this State and subject to this Article if:

"(a) It has been claimed as abandoned or escheated under the laws of such other State; and

"(b) The laws of such other State make reciprocal provisions that similar specific property is not presumed abandoned or escheatable by such other State when held for or owed or distributable to an owner whose last known address is within this State by a holder who is subject to the jurisdiction of this State.

"Section 10a. Foreign Owners. This Article shall not apply to any bank account held within this State where the last known owner was a citizen and resident of another country.

"Section 11. Unclaimed Property Held by the Federal Government.

...
"Section 15. Escheat Expense and Reimbursement Fund.
...

APPENDIX B
EXCERPTS FROM
PERTINENT NEW JERSEY STATUTES

ARTICLE 3. PERSONAL PROPERTY;
ALTERNATE METHOD.

2A:37-29. Summary of Alternate method

In addition to the method provided for the escheat generally of personal property as defined in article 2 of this chapter, an alternate method may be employed in certain cases defined in this article 3. By this latter method the state may take into its protective custody property consisting of cash, dividends, interest or wages owed by any corporation organized or doing business under the laws of this state, belonging to any person remaining unknown, or whose whereabouts is unknown, or whose property remains unclaimed as defined herein for a period of 5 successive years; and after a period of protective custody has expired as herein prescribed, the state may proceed to escheat such property to itself.

2A:37-30. When alternate method is available; summary action

Whenever a corporation organized under the laws of this state shall have custody or possession of, or shall have deposited with or given to an agent or trustee residing within or without the state custody or possession of, any moneys which are or shall be payable to any person as a dividend upon the capital stock, preferred or common, of the corporation, or as interest payable upon the corporation's bonds, indentures, notes or other formal instruments evidencing the indebtedness of the corporation, or any moneys payable as wages from the corporation to any person, and whenever any person or any corporation organized

under the laws of any other state and authorized to do business in this state shall have custody or possession of any moneys payable by such person or corporation to any person as wages earned within this state, or of any moneys otherwise having a situs within this state, which moneys are payable to any one person in any of the categories above enumerated and the owner of, beneficial owner of, or person entitled to the same has been and remains unknown for the period of 5 successive years, or the whereabouts of such person has been and remains unknown for the period of 5 successive years, or such personal property has been and remains unclaimed for the period of 5 successive years, then the superior court may in a summary action brought in the name of the state of New Jersey by the attorney general or such attorney-at-law as he may designate, direct the corporation or other person aforesaid to deliver such moneys to the state treasurer for safekeeping.

2A:37-31. Moneys delivered upon service of judgment

Upon the entry of the judgment in the action, a copy of the judgment shall be served upon the corporation, or other person aforesaid, who shall forthwith deliver the said moneys to the state treasurer, together with a list of the individual amounts, the names, if known to the corporation or other person aforesaid, of the owners or beneficial owners of, or persons entitled to, such moneys, the last-known address of such persons, and any other information he may have relating to the last-known address of any person having an interest in, together with any other information relating to, such personal property or the whereabouts of such owner.

2A:37-32. Mailing of notices

The state treasurer shall thereupon mail a letter or post card to each person named in the list, to his last-known address, as shown by such list, informing him that the state

treasurer holds such moneys in the amount designated in the list as his property, for the benefit of the person therein named, and that if said person does not, in writing, make claim to such moneys within 2 years from the date of such notice, an action will be instituted to escheat such moneys to the state in conformity with this article. The state treasurer shall also mail a similar notice to the attorney general of the state where such persons had his last known address, if such address is without the state of New Jersey, advising him to present any claim that such state might have to such money. If a claim is made to the state treasurer within such period of 2 years, and he shall determine that the claim is valid, he shall pay the moneys so claimed to the person entitled thereto. If the state treasurer shall determine that the claim is not valid, he shall reject the claim. The claimant may thereupon apply to the superior court, chancery division, for a review of his determination, and the claim shall thereupon be heard and determined, de novo.

2A:37-33. Payment to operate as a release

The payment of the said moneys by the corporation or other person to the state treasurer pursuant to the provisions of this article shall, as respects such moneys, automatically operate as a full, absolute and unconditional release and discharge of the corporation or other person from any and all claims, demands or liability to the person whose moneys have been paid to the treasurer, and such payment may be pleaded as an absolute bar to any action brought against such corporation or other person by any person whatsoever. Any right to such moneys which any claimant may have shall thereby be transferred against, and shall become the obligation of, the state.

2A:37-34. Money to escheat to state

If moneys so deposited with the treasurer shall remain unclaimed for the period of 2 years from the date of the

mailing of the letter or post card to the person listed as the owner (after the 5-year period such moneys were in the custody or possession of the corporation or of its agent or trustee), the said moneys shall escheat to the state and the treasurer shall inform the attorney general thereof.

2A:37-35. Escheator's fee

2A:37-36. Action in superior court; hearing

The attorney general, or the attorney-at-law, designated by him, shall thereupon bring, in the name of the state of New Jersey, a summary action in the superior court for the escheat of the said moneys to the state of New Jersey. The hearing in the action shall be not less than 20 days nor more than 40 days after the commencement of the action.

2A:37-37. Notice

The court shall provide for notice of the action by directing that a notice as stated in section 2A:37-38 of this title be posted in the place in the state capitol specified by the court where other notices required to be posted are customarily posted, such posting to be made not less than 20 days before the date fixed for the hearing. If the amount of money or property to be escheated in the case of any one person exceeds \$5, then as to him the escheat notice shall be published once a week for 2 successive weeks in a newspaper of general circulation in Mercer county or such other county as the court shall designate, the last publication to be made not less than 20 days before the date fixed for hearing; but if such amount is less than \$5, the court may by order dispense with publication.

A copy of such notice shall also be mailed to the last known address of the person whose property is to be escheated and if such address is without this state, then to

the attorney general of the state where such person had his last known address.

2A:37-38. The contents of the notice

2A:37-39. To escheat to state

If no person shall file a claim or appear at the hearing to substantiate a claim, or where the court shall determine that a claimant is not entitled to the moneys claimed by him, then, in either event, the court shall enter a judgment that the personal property described in the complaint has escheated to the state.

2A:37-40. Court may reopen proceedings

At any time within 7 years after the entry of a judgment in escheat, the court may, upon a proper showing and sufficient proof that the claimant did not have actual knowledge of the action for escheat, reopen the same and amend the judgment in whole or in part, and in such amended judgment direct the state treasurer to repay to the claimant the moneys to which he is entitled, together with interest at 2% from the date of the original judgment.

2A:37-41. Moneys placed in separate fund; use

After the state treasurer shall have received into his custody any property or moneys as provided in this article, he shall place the same in a separate fund pending its final disposition by the court. It shall be lawful for him to invest any part of such fund temporarily in the obligations of the state or any subdivision thereof. It shall also be lawful for him to advance up to 90% of the fund as a temporary loan for the use of any department of the state, to be repaid when the custodial fund shall have been finally disposed of by the court through escheat or otherwise, provided such temporary loan shall have been approved by

the governor and the legislature. When such funds in his hands shall have become escheatable it shall be duty to notify the attorney general so that the attorney general may proceed to escheat the said moneys or property in conformity with the provisions of this article.

2A:37-42. Attorney general notified of escheatable property

2A:37-43. Treasurer authorized to repay

Whenever it shall appear to the satisfaction of the state treasurer or his representative that a person is the lawful owner of any moneys that have heretofore been received by the treasurer under the provisions of this article, and that such moneys are less than \$50 the state treasurer is hereby authorized and empowered to repay to the lawful owner aforesaid the moneys so received without the necessity of re-opening the judgment theretofore entered.

APPENDIX C

EXCERPTS FROM

PERTINENT PENNSYLVANIA STATUTES

CHAPTER 5.—UNCLAIMED FUNDS IN HANDS OF FIDUCIARIES

GENERAL PROVISIONS

§ 331. *Definitions*

(a) The term "fiduciary" in this act shall include receivers, executors, administrators, guardians, committees, trustees, assignees, and all other persons, associations, or corporations, acting in any fiduciary capacity whatever, subject to the jurisdiction of any court of any county in this Commonwealth; (b) the word "he" shall mean he, she, it, or they; (c) the word "his" shall mean his, hers, its, or theirs; and (d) the word "him" shall mean him, her, it, or them, according to whether the fiduciary is a male or female, a corporation or association, or two or more individuals.

§ 332. *Property held by trustees, etc.*

Whenever any trustee, bailee or other depository is or shall be seized or possessed of property, real, personal or mixed, as a fiduciary agent, which property is or shall be without a rightful owner, the same shall escheat to the commonwealth, subject to all legal demands on the same.

§ 333. *Property of unknown owners; unclaimed property; property without rightful owner*

(a) That whensoever any trustee or other person is or shall be sized of any property or estate, real or personal, in

a fiduciary capacity, and shall file an account of the same in any court of this Commonwealth, and whensoever it shall appear that the cestui que trust, or beneficial owner, of said property of effects, or any part thereof, has been unknown for a period of seven years, and still remains unknown, then and in such case so much of said property or effects as belonged to said unknown cestui que trust, or beneficial owner, shall escheat to the Commonwealth, subject to all legal demands on the same; and whensoever the trustee or trustees under a dry trust, and whensoever on the termination of an active trust, or afterwards, the trustee or trustees thereunder is, are, or shall be seized or possessed of any property or estate, real or personal, either the subject of the trust or in any wise arising from the possession of the trust property, or the exercise of the trust, or resulting after the termination of the trust and before distribution is actually made under the terms of the trust or decree of court, from rents, accretions, profits, or interest from, of, or on the trust property, or any part thereof, which property or estate is or shall be without a lawful owner, such property or estate shall escheat to the Commonwealth, subject to all legal demands on the same.

(b) Whensoever the owner, beneficial owner of, or person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

(c) Whensoever any real or personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property, together with

the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

(d) Whensoever any real or personal property within or subject to the control of this Commonwealth is or shall be without a rightful or lawful owner, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

(e) This section shall not apply to corporations which are engaged in receiving deposits of money, securities or other property for safe keeping.

§ 361. *Making false report; penalty*

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§ 362. *Proceedings to compel accounting*

Whenever the Auditor General shall have reason to believe that any fiduciary has in his possession any moneys of which he has filed no account within the time prescribed by law, or, if no such time be so prescribed, then when he has filed no such account within a reasonable time after moneys shall have come into his possession, which moneys would be subject to be paid into the State Treasury under the provisions of this act if an account thereof were filed, the Attorney General shall, at the suggestion of the Auditor General, apply by petition to the court, to the jurisdiction of which the said fiduciary is subject, for the issue of a citation to said fiduciary to show cause why he should not file an account of such moneys and the statement thereof required by the provisions of this act to be filed therewith, and, if no sufficient cause to the contrary be shown on the return of such citation, the said court shall order the filing of said account and statement, and enforce such order by attachment.

CHAPTER 6.—PAYMENT INTO STATE TREASURY, WITHOUT ESCHEAT

§ 431. *Proceedings to compel payment within time for escheat*

Whenever any person, firm, association, bank, national bank, trust company, or other corporation whatsoever, shall hold or be possessed of any items of money or property which are or shall be made escheatable by any act of the General Assembly, the Auditor General may and shall, after such items have been reported to or otherwise ascertained by him, and after notice and advertisement of such items shall have been given and made as required by the provisions of the act under which such items are escheatable, if the number and nature of the items of such escheatable property so held or possessed are in his opinion such as to make such action desirable, suggest to the Attorney General that, instead of proceeding for the escheat of such items in the manner prescribed by the act under the provisions of which such items are made escheatable, the Attorney General apply by petition to the proper court for an order upon the person, firm, association, bank, national bank, trust company, or other corporation, holding or possessed of such items of moneys or property, directing the payment of the same into the State Treasury to the credit of the Commonwealth, together with interest thereon actually accrued to the date of the issue of said order, or, if the property consists of chattels or securities, that the same be sold in such manner as the court shall direct, and the proceeds thereof be similarly paid into the State Treasury; all amounts and proceeds so paid to be subject to being refunded as hereinafter provided. It shall not be necessary, in instituting proceedings under the provisions of this act, to await the expiration of any period which the act making such items escheatable requires to elapse between the reporting or

ascertainment of such items and the institution of proceedings for the escheat thereof.

§ 432. *Jurisdiction of courts*

§ 433. *Petition; hearing; order; effect of payment*

Whereupon the Attorney General shall file a petition in the proper court, praying for the making of such an order, and apply to said court to set a day for a hearing upon such petition, and for a preliminary order that service of a copy of the petition and of notice of the date set for hearing be made upon the person, corpartnership, association, bank, trust company, or other corporation holding or possessed of said items. If at said hearing it shall appear to the said court that, since the reporting of or the ascertainment of said items by the Auditor General, any such items have been claimed by persons lawfully entitled thereto, or any such items are so claimed at said hearing, or that said items were not properly subject to escheat under the provisions of any act of the General Assembly, the court shall order said items or the amounts thereof to be delivered or paid to said claimants, or to remain in the possession of the person, firm, association, bank, national bank, trust company, or other corporation, as the facts shall warrant, and shall order the amounts of all items not so claimed to be paid into the State Treasury to the credit of the Commonwealth, or, if such items consist of chattels or securities, that the same be sold in such manner as the court may direct and that proceeds thereof be similarly paid into the State Treasury.

It is the purpose and intent of this act that moneys subject to escheat, sought by the Commonwealth to be ordered paid into the State Treasury without escheat, under the provisions of this act, shall be forthwith ordered by the proper court to be so paid, whenever application for such an order is made by the Attorney General after the respec-

tive periods provided by existing law making such moneys escheatable shall have expired respectively, and after the notices by mail and by advertisement required to be given by the act making such moneys escheatable shall have been given, without any further notice whatever to depositors, beneficiaries, or creditors.

An appeal to the Supreme Court may be taken from any order made by any court under the provisions of this act, by either the Commonwealth or the respondent to the petition whereon said order is made, at any time within thirty days after the date of said order.

§ 435. *Definitions*

The following words, terms and phrases, when used in this act, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

"Company". The word company shall include limited partnerships and unincorporated associations, joint-stock associations, public utility corporations, insurance exchanges, associations or corporations, and any company or corporation incorporated and doing business under the laws of this Commonwealth, except life insurance companies doing business in this Commonwealth, but including stock life insurance companies with respect to unclaimed dividends or profits declared to stockholders and with respect to unclaimed stock, except mutual savings fund societies and building and loan associations, and except banks, national banks, bank and trust companies, trust companies and other corporations, associations, partnerships, limited partnerships, and partnership associations, engaged in the business of receiving money on deposit or securities or other property for safekeeping.

"Creditor." The word creditor shall include any person who has made deposits or advances of money, or to whom dividends or profits have been declared, or to whom debts

and interest on debts have been owed, or to whom the proceeds of any policy of insurance are due and payable.

"Debt". The word debt shall include only such debts as are formally created and of the type, ownership to which is evidenced by written or printed securities having definite maturities, interest rates, places and times of payment, such as mortgages, bonds, notes, equipment-trust certificates and debentures.

"Department". The Department of Revenue of this Commonwealth.

"Person". Any natural person, association or corporation.

"Property". The word property shall include property and profits, accretions, and any interests or rights accrued or declared thereon.

The singular shall include the plural, and the masculine shall include the feminine and neuter. Section headings shall not be deemed or construed to limit the text of the sections of this act.

§ 436. *Reports*

(a) In the month of January of each year reports shall be made to the departments as follows:

(1) Every company shall make a report of all dividends or profits declared by it to any stockholder or member and unclaimed for six or more successive years next preceding the first day of said month, where funds have been provided by the company for the payment of said dividends or profits, and of all debts and interest on debts due by it to any creditor, for the payment of which debts or interest thereon funds have been provided by the company, where said payments have been unclaimed for six or more successive years next preceding the first day of said month.

(2) Every company shall make a report of any and all customers, advances, tolls or deposits held by it, and under the terms of the deposit agreement due and owing to the person or company depositing the same and unclaimed by

said person or company for six (6) or more successive years next preceding the first day of said month.

(3) Every company shall make a report of the proceeds of any policy of casualty, indemnity or fire insurance awaiting due proof for payment, or the surrender values of policies which have been surrendered by the policyholder or insured, or have been surrendered or are surrenderable at the option of the insurer under the contractual agreement between the insurer and the insured, or the portions of premiums held to the credit of any policyholder and any profits, dividends or accretions thereon which have been held and are owing by any company, as hereinabove defined, and have been unclaimed by and unpaid to the lawful owner thereof, or to the person or persons legally entitled thereto, for seven or more successive years next preceding the first day of said month.

(4) (a) Every company shall make a report of any and all stock or certificates of beneficial interest, of whatsoever nature, issued by or authorized to be issued by such company, which have been demandable and have been and remain unclaimed by the person legally entitled thereto for six or more successive years next preceding the first day of said month.

§ 437. *Inquisitorial powers of the department*

§ 441. *Procedure for the escheat of moneys or property subject to escheat*

The escheat of any moneys or property heretofore subject to escheat and required to be reported to the department under the provisions of this act, may, at the suggestion of the department, be determined and enforced by an action in the nature of a bill in equity, filed by and in the name of the Attorney General against the company and

all of its stockholders, creditors, depositors, policyholders or other persons for whom the company holds moneys or property required to be reported under the provisions of this act, in the said court of common pleas. Any such escheat proceedings may be so prosecuted whether such moneys or property shall have been reported to the department as required by the provisions of this act or have not been so reported. Any number of items of such moneys or property may be joined in one action against one company though due and owing to, or held and possessed for, different persons.

If service of the bill cannot be had on any persons legally entitled to the moneys or property required to be reported to the department, service shall be made by publication for two successive weeks in a newspaper of general circulation, published in the county in which such person resides, or, in the case of a corporation, in which it has its principal office, and also, when practicable, for the same period in such a newspaper published in the county, within or without the Commonwealth, where, when last heard from by the company, the person or corporation legally entitled to such property had its residence or place of business. Publication may be made in such form as the court shall direct, and need not contain any order or other paper in full. If the person legally entitled to such property or his legal representatives shall appear within the time limited by the court and establish his right to recover said moneys or property from the company, but for the provisions of this act, and if this right shall not be barred by the statute of limitations or presumption of payment, a decree shall be made for the payment of said moneys or other property to said person, after paying his proportionate part of the costs of the cause and of said advertising: Provided, That such person legally entitled to such moneys or property may have any issue of fact determined by a jury, and if he shall

not so appear and establish such right, a decree shall be made that said moneys or property has escheated and shall be paid by the company into the State Treasury, through the department, for the use of the Commonwealth. The amount of such decree shall bear interest at the rate of twelve per centum per annum sixty days after the same is made, and such decree shall be effectual to bar persons or companies legally entitled to said moneys or property from claiming the same from the company. An appeal may be taken by either or any party to such action to the Supreme Court at any time within thirty days after the date of the decree issued therein. A receipt of the department for any moneys or property paid over to the State Treasury, in accordance with the provisions of such decree, shall be a full and sufficient discharge to the said company from any further liability with respect to such moneys or property to any person or company legally entitled thereto.

§ 442. *Alternative procedure for payment into State Treasury without escheat*

Whenever any company shall hold or be possessed of any items of money or property required to be reported under the provisions of this act, the department may, after such items have been reported to or otherwise ascertained by it, and after notice and advertisement of such items shall have been given and made as required by this act, if the number and nature of the items so held or possessed are, in the opinion of the department, such as to make such action desirable, suggest to the Attorney General that, instead of proceeding to secure a decree for the escheat of items in the manner hereinabove prescribed, the Attorney General apply by petition to said court for an order upon said company holding or possessed of such items of money or property directing the payment of the same without escheat into the State Treasury, through the department, to the credit of the Commonwealth, together with interest

thereon actually accrued, if any, to the date of the issue of said order, or if the property consists of shares of stock or other securities that the same be sold in such manner as the court shall direct and the proceeds thereof be similarly paid into the State Treasury, all amounts and proceeds so paid to be subject to being refunded by petition to the Board of Finance and Revenue as hereinafter provided.

A receipt of the department for any moneys or property paid over to the State Treasury, in accordance with the provisions of such order of court, shall be a full and sufficient discharge to the said company from any further liability with respect to such moneys or property to any person or company legally entitled thereto.

CHAPTER 4.—ESCHEAT OF UNCLAIMED DEPOSITS GENERAL PROVISIONS

§ 241. *Definitions; application of act*

The word "debtor," in this act, shall include persons, copartnerships, associations, banks, national banks, trust companies and other corporations who or which have received deposits of money, declared dividends or profits, or owed debts or interest on debts; and trustees, guardians, committees, executors, administrators, assignees, receivers or other persons, or corporations who have received and hold moneys in any fiduciary capacity whatsoever, or continue to hold the same or any portion or increment thereof after the termination of the fiduciary relation; and shall also include officers of courts holding funds escheatable under the provisions of this act.

The word "creditor," in this act, shall include persons, as hereinafter defined, who have made deposits of money, persons to whom dividends or profits have been declared, persons to whom debts and interest on debts are or have been owed, or to whom property in storage or safekeeping

belongs, and cestuis que trustent and beneficial owners of any property, money, or estate, or of the profits, accretions, and interest thereon as hereinafter in this section defined held by any debtor as above described.

The word "person," in this act, shall include every person, persons, co-partnership, and unincorporated association, and every company, corporation, bank, national bank, safe-deposit company, trust company, insurance company, other than a life insurance company doing business in this Commonwealth, joint-stock company or association, limited partnership, and partnership association, doing business within this Commonwealth.

The words "property," "moneys," "estate," or "estates," in this act, shall include the profits, accretions and interest thereon as well as interest thereon accrued or which should have accrued between the fixing of the amount of such property, money, or estate by the award of any court and the actual distribution thereof, or at any other time; and the owner of such property, money, or estate shall be deemed entitled to demand such award, and notwithstanding any settlement with or release by him.

The provisions of this act shall not apply to the unclaimed funds and proceeds due and payable under life and endowment insurance policies and held and owing by life insurance companies doing business in this Commonwealth.

§ 262. *Contents, form, and verification of report*

NOTICE AND PROCEEDINGS TO
ENFORCE ESCHEAT

§ 281. *Notice to owners of deposits, etc.; publication deposits*

When any particular deposit of money, or of property received for storage or safe-keeping or held for the benefit

of another, dividend, profit, debt, or interest on debt, shall be first reported to the Auditor General, he shall notify the person entitled thereto of such fact by a letter addressed to him at the address furnished by the person, corporation, or association reporting such money or property in his or its said report, if any such address is furnished in said report, and shall publish, once a week for two successive weeks, during the month of July in each year, in one or more general newspapers having the largest circulation published in the city or county in which such corporations, associations, banks, national banks, trust companies, insurance companies, limited partnerships and partnership associations may be located, respectively, a true and accurate statement containing the name, address, amount of money, or character of the property, respectively, belonging to them or for whose benefit the same is held, so far as such data has been supplied to the Auditor General by the person, corporation, or association in its report.

The Auditor General, if he deems it to the best interests of the Commonwealth, may make such publication of legal notices, in addition to publication in a general newspaper.

This section does not require the publication by the Auditor General of any item containing the name, address, amount of money, or character of property belonging to any person, where the amount involved is less than ten dollars, but publication of any such items may be made when the Auditor General deems such publication for the best interests of the Commonwealth.

The publications required by this section shall not be considered a condition precedent to the institution of prosecution of any action in the courts of the Commonwealth for the escheat of any moneys or of the proceeds of any property as provided by this act.

Items of moneys or property escheatable under the provisions of this act, which were not reported to the Auditor

General in the annual report of the person, copartnership, association, bank, national bank, or other corporation holding such moneys or property, but which were afterwards returned to the Auditor General in special reports to that officer, or which were not reported to him but were ascertained by his agents, may be advertised in the foregoing manner, for the same period, at any time, and notice by mail to the several depositors, beneficiaries, or creditors shall be given in such cases as soon as the items are reported or otherwise ascertained.

§ 282. *Escheat of deposits, etc.; enforcement; rights of creditors; decree; bill for discovery*

General in the annual report of the person, copartnership, association, bank, national bank, or other corporation holding such moneys or property, but which were afterwards returned to the Auditor General in special reports to that officer, or which were not reported to him but were ascertained by his agents, may be advertised in the foregoing manner, for the same period; at any time, and notice by mail to the several depositors, beneficiaries, or creditors shall be given in such cases as soon as the items are reported or otherwise ascertained.

§ 282. *Escheat of deposits, etc.; enforcement; rights of creditors; decree; bill for discovery.*

FILE COPY

Office-Supreme Court, U.S.
FILED

MAY 31 1962

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1961.

No. 13 Original.

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, ET AL.,

Defendants.

**RESPONSE OF DEFENDANT, SUN OIL COMPANY, TO
PLAINTIFF'S MOTION FOR LEAVE TO FILE
BILL OF COMPLAINT.**

HENRY A. FRYE, ✓

PEPPER, HAMILTON & SCHEETZ,

2001 Fidelity-Philadelphia Trust Bldg.,

Philadelphia 9, Penna.,

*Attorney for Defendant, Sun Oil
Company, 1608 Walnut Street,
Philadelphia 3, Penna.*

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1961.

No. 13 ORIGINAL.

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, ET AL.,

Defendants.

**RESPONSE OF DEFENDANT, SUN OIL COMPANY TO
PLAINTIFF'S MOTION FOR LEAVE TO FILE
BILL OF COMPLAINT.**

In accordance with the order of the Court entered May 14, 1962, Defendant, Sun Oil Company, by its attorney, respectfully responds to the prayer for temporary injunction contained in subparagraph (4) of Paragraph XIX of the Complaint attached to Plaintiff's Motion for Leave to File Bill of Complaint, as follows:

(4) Defendant, Sun Oil Company, joins in the prayer of Plaintiff that a temporary injunction be issued restraining Defendant, Sun Oil Company, from paying, delivering or in any manner relinquishing the property identified in Plaintiff's Complaint or any other property to the Defendants, the State of New Jersey, the Attorney General of New Jersey, the State of Pennsylvania and the Attorney General of Pennsylvania or to any other person or entity, including Plaintiff, pending further orders of this Court.

.....
HENRY A. FRYE,

*Attorney for Defendant,
Sun Oil Company.*

PROOF OF SERVICE.

I, Henry A. Frye, attorney for Defendant, Sun Oil Company, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ~~29th~~ day of *May*, 1962, I served copies of the foregoing Response of Defendant, Sun Oil Company, to Plaintiff's Motion for Leave to File Bill of Complaint on each of the other parties to this action by depositing copies in a United States post office or mail box, as certified mail with first class postage or air mail postage prepaid, and addressed to:

- (1) Honorable Price Daniel
Governor of Texas
State Capitol
Austin, Texas
- (2) Honorable Will Wilson
Attorney General of Texas
Courts Building
Austin 11, Texas
- (3) Honorable Richard J. Hughes
Governor of New Jersey
State Capitol
Trenton, New Jersey
- (4) Honorable David D. Furman
Attorney General of New Jersey
State Capitol
Trenton, New Jersey
- (5) Honorable David L. Lawrence
Governor of Pennsylvania
State Capitol
Harrisburg, Pennsylvania
- (6) Honorable David Stahl
Attorney General of Pennsylvania
State Capitol
Harrisburg, Pennsylvania

It is further certified that copies of the Response of Defendant, Sun Oil Company, to plaintiff's Motion for Leave to File Bill of Complaint have been served on the states named in Paragraph VI of Plaintiff's Complaint by depositing copies in a United States post office or mail box, as certified mail with first class postage or air mail postage prepaid and addressed to the Governors and Attorneys General of each of such states.

.....
HENRY A. FRYE,
Attorney for Defendant,
Sun Oil Company.

FILE COPY

Office-Supreme Court, U.S.

FILED

MAY 29 1962

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States

October Term, 1961
No. 13 Original

STATE OF TEXAS,

Plaintiff

v.

STATE OF NEW JERSEY ET AL.,

Defendants

**ANSWER OF COMMONWEALTH OF
PENNSYLVANIA TO COMPLAINT
OF STATE OF TEXAS**

DAVID STAHL ✓

*Attorney General of the
Commonwealth of Pennsylv-
ania*

JACK M. COHEN

*Deputy Attorney General of
the Commonwealth of Penn-
sylvania*

State Capitol
Harrisburg, Pennsylvania

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ANSWER OF COMMONWEALTH OF
PENNSYLVANIA TO COMPLAINT
OF STATE OF TEXAS

The Commonwealth of Pennsylvania, by David Stahl, Attorney General, makes answer to the Complaint of the State of Texas, as follows:

I. Admitted.

II. Admitted. (On call for proof.)

III. Admitted.

IV. The Commonwealth of Pennsylvania acts herein by and through David Stahl, Attorney General, as requested by Charles M. Dougherty, Secretary of Revenue, in accordance with the provisions of the statutes of Pennsylvania.

V. Admitted.

VI. Admitted that the plaintiff has mailed a copy of the Complaint to the Governor and Attorney General of the Commonwealth of Pennsylvania, as to the remainder of plaintiff's allegations contained in this paragraph, Commonwealth of Pennsylvania has no knowledge and demands proof thereof if pertinent to the case.

VII. Admitted that the Sun Oil Company has filed with the Treasurer of Texas a written report of personal property which is held by the company and deemed by it to be subject to escheat in Texas under the statutes of Texas.

Admitted that the Texas statute defines the term "subject to escheat" as stated in paragraph VII of the Complaint, and also defines "personal property" as stated in the said paragraph.

Admitted that the Treasurer of Texas has received and holds the aforesaid report.

The defendant has no knowledge as to the averments of paragraph VII of the Complaint relating to the said property.

The defendant has no knowledge except as set forth in the Complaint, that the said property is being claimed by the Treasurer of the State of Texas and the Attorney General of Texas as property subject to escheat exclusively to Texas under the laws as having been reported by the holder thereof as abandoned personal property held within the State of Texas or held without the State of Texas for a person whose last known address is in Texas. Proof of such averments, if relevant, is demanded.

For further answer, the defendant's answer to paragraph XI of the Complaint is herein incorporated by reference.

VIII. Admitted.

IX. The defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph IV of the Complaint. Proof of such averments is demanded.

X. Denied as averred. The defendant, Commonwealth of Pennsylvania, has not notified the Sun Oil Company that Pennsylvania is claiming property

reported by Sun Oil Company to the Treasurer of Texas. The Commonwealth of Pennsylvania, by telegraphic communication to the Attorney General of State of Texas has requested that the Commonwealth of Pennsylvania be given access to the company's books and records for the purpose of determining those items claimed by the State of Texas which it would deem escheatable to the Commonwealth of Pennsylvania.

The Commonwealth of Pennsylvania; while it has not asserted a claim in escheat to any specific property held or owing by the Company, nonetheless avers that since the defendant Sun Oil Company has its principal office in the Commonwealth of Pennsylvania, the said Commonwealth by virtue thereof will assert claim to either all or a part of the identical sums presently claimed by the plaintiff, State of Texas.

To-date, the defendant Sun Oil Company has failed to permit the Commonwealth of Pennsylvania to audit its books and records, and pending institution and completion of such an audit, the Commonwealth of Pennsylvania makes claim in this present suit to all of the same funds claimed by its sister states.

XI. The defendant is without knowledge or information sufficient to form a belief as to the truth of the averment that the property which Sun Oil Company has reported to the Treasurer of Texas is approximately \$37,853.53. Proof of such averment is demanded.

The defendant is without knowledge or information sufficient to form a belief as to the averment that the debts listed under (1), (2), (3), (4) and (5) arose out of the operations of the Sun Oil Company in Texas

Answer to Complaint

through its operations in Texas. Proof of this averment is demanded. The defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Sun Oil Company records of these individual debts were originally made and entered into, and have since been kept in the company's division offices in Texas. The averments contained in sub-paragraphs one to five hereof are denied and proof thereof is demanded at the trial of this case.

The averment that the debts listed under (6), (7), (8), and (9) are believed to have arisen in Texas is vague and uncertain. The defendant is without knowledge or information sufficient to form a belief as to the place where such debts arose, and the averments are therefore denied. Defendant, Commonwealth of Pennsylvania, demands proof thereof at the trial of this case.

The averment that the situs of the aforesaid property is in Texas and subject to the jurisdiction of Texas is a statement of an opinion or conclusion of law. The defendant is without knowledge or information sufficient to form a belief as to the situs of such debts, and the averments pertaining thereto are denied. The defendant, Commonwealth of Pennsylvania, demands proof thereof at the trial of this case.

XII. Admitted. Except that the Commonwealth of Pennsylvania has no knowledge or information sufficient to form a belief as to the truth of the statement that defendant, Sun Oil Company, has been engaged in business in Texas, throughout the time the subject debts arose. All means of proof thereof are in the exclusive control of the plaintiff and hence these aver-

ments are denied. Proof thereof is demanded at the trial of this case.

XIII. Denied. The averments of paragraph thirteen of plaintiff's complaint contain conclusions of law to which no answer is required but to the extent that they are relevant and material, the Commonwealth of Pennsylvania demands proof thereof at the trial of this case.

XIV. Denied for the reasons set forth in Paragraph XIII.

XV. Denied for the reasons set forth in Paragraph XIII.

XVI. Denied for the reasons set forth in Paragraph XIII.

XVII. Admitted. The Commonwealth of Pennsylvania is also entitled to the same opportunity. It is also entitled to the opportunity, in accordance with law, to make such inquiry of the Sun Oil Company, and to make such demands for the books and records of Sun Oil Company as will enable the Commonwealth to decide whether any property held is subject to the escheat or custody statutes of the Commonwealth and therefore to institute such proceedings, whether in the court, or in any other court having jurisdiction under the laws of the Commonwealth or the United States, for a judgment awarding the escheat or custody of the said property to the Commonwealth.

XVIII. Admitted. Except that the Commonwealth of Pennsylvania is also entitled to the same opportunity. The Commonwealth is also entitled to the opportunity under its laws to make such claims and to make

such examination of the books and records of the Sun Oil Company as will enable the Commonwealth to determine the exact claim, if any, it shall assert before this Honorable Court.

XIX. Wherefore, the Commonwealth of Pennsylvania prays as follows:

(1) The Commonwealth of Pennsylvania joins in the plaintiff's first prayer.

(2) The Commonwealth of Pennsylvania joins in the plaintiff's second prayer.

(3) The prayer for a temporary injunction should not be applied to the Commonwealth's right to obtain discovery or knowledge of the nature, amount, and situs and last known rightful owners of the money or property made the subject of the present case, thereby enabling the Commonwealth of Pennsylvania to make adequate answer to plaintiff's complaint and thus assist the Commonwealth in asserting any valid claim it may in the premises.

(4) The Commonwealth joins in the plaintiff's fourth prayer.

(5) That upon the final adjudication of the suit, the temporary injunction, if any, be dissolved, there being no basis for the assumption by the plaintiff that the Commonwealth will fail to abide by the determination of the merits of the case by your Honorable Court.

(6) That a decree be entered recognizing the Commonwealth of Pennsylvania's right to escheat or take into its custody all or any part of the funds or other property in question.

(7) That a decree be entered recognizing the Commonwealth of Pennsylvania's right to escheat or take into custody all or any part of the funds or other property in question.

(8) That all the parties to the within proceedings be given such other and further relief as the Court may deem proper under the circumstances.

DAVID STAHL

Attorney General of the Commonwealth of Pennsylvania

JACK M. COHEN

*Deputy Attorney General,
Commonwealth of Pennsylvania*

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Office-Supreme Court, U.S.

FILED

JUN 1 1962

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 13 Original.

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, *et al.*,

Defendants.

**RESPONSE OF THE STATE OF NEW JERSEY TO
PRAYERS FOR TEMPORARY INJUNCTION CON-
TAINED IN PARAGRAPHS 3 AND 4 OF MOTION
FOR LEAVE TO FILE BILL OF COMPLAINT.**

ARTHUR J. SILLS,
Attorney General of New Jersey.

THEODORE I. BOTTER,
Assistant Attorney General of New Jersey.

CHARLES J. KEHOE,
Deputy Attorney General of New Jersey.

State House Annex,
Trênton, New Jersey,

*Attorneys for Defendant,
The State of New Jersey.*

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961.

No. 13 Original.

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, *et al.*,

Defendants.

**RESPONSE OF THE STATE OF NEW JERSEY TO
PRAYERS FOR TEMPORARY INJUNCTION
CONTAINED IN PARAGRAPHS 3 AND 4 OF
MOTION FOR LEAVE TO FILE BILL OF COM-
PLAINT.**

The State of New Jersey, defendant, by Arthur J. Sills, its Attorney General, pursuant to order of this Court, responds to the prayers for temporary injunctions contained in paragraphs 3 and 4 of Motion to File Bill of Complaint by plaintiff, State of Texas as follows:

I.

There is presently pending in the Superior Court of New Jersey, Chancery Division, a civil action by the State of New Jersey against Sun Oil Company, a New Jersey corporation, (Docket No. C-192-61) wherein New Jersey seeks a judgment directing the defendant to deliver to the State Treasurer of New Jersey for safekeeping, monies

payable by Sun Oil Company for unclaimed wages, interest, dividends and other general cash obligations, said monies being payable to persons who have been and remain unknown for a period of 5 successive years or whose whereabouts have been and remain unknown for the period of 5 successive years or which monies have been and remain unclaimed for the period of more than 5 successive years.

II.

A pretrial conference was held in said action in the Superior Court of New Jersey resulting in the entry of a pretrial order on March 29, 1962. Contrary to the allegations of the State of Texas in paragraph 8 of the Motion For Leave to File Bill of Complaint, said order did not overrule the defense "that the property involved in said suit is being claimed by other states under their escheat laws."

The pretrial order expressly provides that the legal issues to be determined at the trial are:

(A) In the absence of any state other than the State of New Jersey, and the persons entitled to unclaimed dividends, wages and general cash obligations from this proceeding and the jurisdiction of this Court, can this Court enter a judgment against defendant based upon claims to wages earned outside the State of New Jersey, to general cash obligations which arose out of transactions which were not exclusively within the State of New Jersey, which claims are payable to residents or nonresidents of New Jersey, and based upon dividends or wages payable to persons whose last known addresses were not within the State of New Jersey.

(B) Violation of "due process" clause under the United States Constitution in exposing defendant to double escheat of property.

(C) Res judicata and estoppel.

III.

Said action is custodial in nature, and the claims against Sun Oil Company for the monies paid to the State of New Jersey for safekeeping thereupon are transferred against and become the obligation of the State of New Jersey. (N.J. S. 2A:37-33). No action to escheat such monies delivered to the State Treasurer of New Jersey for safekeeping can be taken until at least two years after the entry of judgment for custody. (N.J.S. 2A:37-34). The State of Texas will not be injured if New Jersey takes custody of the subject unclaimed property.

IV.

New Jersey admits that the State of Texas is actively pressing a claim for the unclaimed personal property held by Sun Oil Company which is subject to the provisions of N.J.S. 2A:37-29, *et seq.* New Jersey denies that such unclaimed property held by the Sun Oil Company has any *situs* within the State of Texas or any state other than New Jersey to support the exercise of a state's sovereign power to take custody of such property for the benefit of the owner who is unknown or whose whereabouts is unknown.

V.

Without prejudice to New Jersey's claim that *situs* of the personal property involved, for the purpose of custody and escheat by a sovereign state, is exclusively within New Jersey, and for the sole purpose of expediting the disposition of the present application of the State of Texas, New Jersey, with the consent of the Sun Oil Company, has obtained the entry of an order staying all further proceedings in the action pending in the Superior Court of New Jersey against

Sun Oil Company until this action has been disposed of by this Court. A copy of said order is annexed as Schedule "A".

VI.

The voluntary action by the State of New Jersey makes it unnecessary for this Court to consider the necessity of issuing a temporary injunction restraining the State of New Jersey from proceeding with the pending action against the Sun Oil Company in the New Jersey Superior Court.

VII.

New Jersey is aware of this Court's opinion in *Western Union Company vs. Pennsylvania*, 368 U. S. 71 (1961) and believes that the questions raised by that opinion warrant prompt attention by this Court. Therefore New Jersey will not interpose any objection to the exercise by this Court of its original jurisdiction in this case under the authority of Article III, §2 of the Constitution of the United States and 28 U. S. C. A., §1251.

VIII.

Texas alleges in paragraph 7 of its complaint that it intends to institute suit in the courts of Texas to judicially determine that the property held by the Sun Oil Company has escheated to the State of Texas. Fair play in this matter requires that the State of Texas follow the example of the State of New Jersey and stay all further proceedings in the State of Texas until this Court makes final disposition of the application of the State of Texas. If Texas does not voluntarily take such action, defendant, State of New Jersey, prays that this Court issue a temporary injunction restraining the plaintiff, the State of Texas and

Will Wilson, its Attorney General, from proceeding with any action in the State of Texas against the Sun Oil Company pending further order of this Court.

ARTHUR J. SILLS
Attorney General of the State
of New Jersey

THEODORE I. BOTTER
Assistant Attorney General
of New Jersey

CHARLES J. KEHOE
Deputy Attorney General
of New Jersey

Counsel for Defendant,
the State of New Jersey.

Schedule A.**SUPERIOR COURT OF NEW JERSEY.**

CHANCERY DIVISION, MERCER COUNTY

DOCKET No. C-192-61.

STATE OF NEW JERSEY, by DAVID D.
FURMAN, Attorney General of the
State of New Jersey, Plaintiff,

v.s.

SUN OIL COMPANY, a corporation,
Defendant:

Civil Action.
Order Staying
Further Proceedings.

This matter having been opened to the Court by Plaintiff, State of New Jersey by Arthur J. Sills, Attorney General, Martin D. Moroney, Esq., Attorney specially designated to prosecute this action appearing, and it being shown to the Court that the State of Texas has filed in the Supreme Court of the United States a Motion for Leave to File a Complaint in an original action against the State of New Jersey, the State of Pennsylvania, and the Sun Oil Company, a New Jersey corporation where in Texas alleges an exclusive claim to escheat part of the personal property which is the subject of this action, and it being further shown to the Court that this claim by the State of Texas in the United States Supreme Court may be most expeditiously disposed of by a stay of further proceedings in this matter in this Court and defendant, Sun Oil Company, having consented to the entry of this Order, and good cause being shown, it is on this 29th day of May, 1962

ORDERED that, without prejudice to the rights of the parties, all further proceedings in this action be and the same hereby are stayed until to and including thirty days after the date on which the United States Supreme Court makes final disposition of the application of the State of Texas in the case of *State of Texas v. State of New Jersey, et al.*, in the Supreme Court of the United States, October Term, 1961, No. 13 Original.

/s/ FRANK J. KINGFIELD,
J. S. C.

Consent is given to the making and entry of the foregoing Order.

KATZENBACH, GILDEA & RUDNER
Attorneys for Defendant

By: /s/ SAMUEL RUDNER,
SAMUEL RUDNER,

A Member of the Firm.

LE COPY

Office-Supreme Court, U.S.
FILED

JUN 25 1962

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States

October Term, 1961.

No. 13 Original.

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, ET AL.,

Defendants.

**ANSWER OF DEFENDANT, SUN OIL COMPANY,
TO COMPLAINT OF STATE OF TEXAS**

HENRY A. FRYE,
PEPPER, HAMILTON & SCHWETZ,
2001 Fidelity-Philadelphia Trust Bldg.,
Philadelphia 2, Pa.

Attorney for Defendant,
Sun Oil Company,
1808 Walnut Street,
Philadelphia 3, Pa.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1961.

No. 13 Original.

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, ET AL.,

Defendants.

**ANSWER OF DEFENDANT, SUN OIL COMPANY, TO
COMPLAINT OF STATE OF TEXAS**

Sun Oil Company, one of the defendants, makes answer to the Complaint of the State of Texas as follows:.

I. Admitted.

II. Admitted.

III. Admitted that defendant, State of New Jersey, acts by and through its Attorney General, who is now David D. Furman.

IV. Admitted that defendant, Commonwealth of Pennsylvania, acts by and through David Stahl, Attorney General, as requested by Charles M. Dougherty, Secretary of Revenue.

V. Admitted.

VI. Admitted, except that proof is demanded of the various custodial, abandoned property and escheat statutes of the several States which may make claims to the property referred to in plaintiff's Complaint and any other similar property in the possession of defendant, Sun Oil Company.

VII. Defendant, Sun Oil Company, incorporates herein by reference its answer to Paragraph XI.

VIII. Admitted, except that the State of New Jersey and Sun Oil Company have filed and the Chancery Court of the State of New Jersey has approved a stipulation staying all proceedings in the suit brought by the State of New Jersey against Sun Oil Company, pending the decision of this Court on the motion of the State of Texas.

IX. Admitted that suit was filed by the State of New Jersey as averred, but it is averred as in the answer to Paragraph VIII that action in the suit has been stayed.

X. Admitted.

XI. It is admitted that defendant, Sun Oil Company, filed a report of personal property covering the types of items set forth in Paragraph XI. It is averred, however, that this defendant, within the time prescribed by the Texas law, has filed a list of deletions showing items which have been cleared since the filing of the initial report and calls upon plaintiff to produce such list along with the initial report. Sun Oil Company can neither admit nor deny that the situs of such property and jurisdiction thereof for the purposes of escheat lies in Texas or in any other State, in view of the adverse claims of the defendant States of New Jersey and Pennsylvania and the possible claims of other States to this and other similar property, and reserves to itself the right to claim any offsets, counterclaims, limitations or other defenses it may have under the custodial, abandoned property or escheat laws of the State or States determined to have jurisdiction.

XII. Admitted.

XIII. Defendant, Sun Oil Company, incorporates herein by reference its answer to Paragraph XI.

XIV. Defendant, Sun Oil Company, incorporates herein by reference its answer to Paragraph XI.

XV. Defendant, Sun Oil Company, incorporates herein by reference its answer to Paragraph XI.

XVI. As to the intangible personal property referred to in Paragraph XVI, this defendant admits that it is in real, actual and imminent danger of being compelled by the courts of more than one State to deliver all or a portion or portions of such property to those States, without protection from the claims of other States, and, therefore, submits to the jurisdiction of this Court for the purpose of disposing of the conflicting claims of plaintiffs, of the other defendants and of the several other States which are notified of this proceeding.

XVII. Admitted.

XVIII. Admitted.

XIX. WHEREFORE, defendant, Sun Oil Company, submits itself to the jurisdiction of this Court as may be ordered or decreed and joins in the prayers of subparagraphs (1), (2), (3), (4) and (5) of Paragraph XIX of plaintiff's Complaint.

.....
HENRY A. FRYE,
*Attorney for Defendant,
Sun Oil Company.*

PROOF OF SERVICE.

I, HENRY A. FRYE, attorney for defendant, Sun Oil Company, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 22nd day of June, 1962, I served copies of the foregoing Answer of Defendant, Sun Oil Company, to Complaint of State of Texas on each of the other parties to this action by depositing copies in a United States post office or mail box, as certified mail with first class postage or air mail postage prepaid, and addressed to:

- (1) Honorable Price Daniel
Governor of Texas
State Capitol
Austin, Texas
- (2) Honorable Will Wilson
Attorney General of Texas
Courts Building
Austin 11, Texas
- (3) Honorable Richard J. Hughes
Governor of New Jersey
State Capitol
Trenton, New Jersey
- (4) Honorable David D. Furman
Attorney General of New Jersey
State Capitol
Trenton, New Jersey
- (5) Honorable David L. Lawrence
Governor of Pennsylvania
State Capitol
Harrisburg, Pennsylvania
- (6) Honorable David Stahl
Attorney General of Pennsylvania
State Capitol
Harrisburg, Pennsylvania

It is further certified that copies of the Answer of Defendant, Sun Oil Company, to Complaint of State of Texas have been served on the states named in Paragraph VI of plaintiff's Complaint by depositing copies in a United States post office or mail box, as certified mail with first class postage or air mail postage prepaid and addressed to the Governors and Attorneys General of each of such States.

.....
HENRY A. FRYE,
Attorney for Defendant,
Sun Oil Company.

FILE COPY

Office-Supreme Court, U.S.
FILED

NOV 28 1961

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 13 Original

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, *et al.*,

Defendants.

**ANSWER OF THE STATE OF NEW JERSEY TO
THE COMPLAINT OF THE STATE OF TEXAS**

ARTHUR J. SILL,
Attorney General of New Jersey,
Attorney for Defendant, State
of New Jersey,
State House Annex,
Trenton 25, New Jersey.

THEODORE I. BOTTER,
Assistant Attorney General,

CHARLES J. KEHOE,
Deputy Attorney General,

Counsel for Defendant,
State of New Jersey.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1961

No. 13 Original

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, *et al.*,

Defendants.

**ANSWER OF THE STATE OF NEW JERSEY TO
THE COMPLAINT OF THE STATE OF TEXAS**

The State of New Jersey, by Arthur J. Sills, Attorney General of the State of New Jersey, State House Annex, Trenton, New Jersey, answering the complaint of plaintiff says:

I

The allegations of paragraph I of the Complaint are admitted.

II

The allegations of paragraph II of the Complaint are admitted.

III

In answer to the allegations of paragraph III of the Complaint, the State of New Jersey, acting by and through the Attorney General of the State of New Jersey has commenced a civil action in the Superior Court of New Jersey, under the provisions of Article 3, Chapter 37, Title 2A, New Jersey Statutes, seeking custody, for safekeeping, of property held by the Sun Oil Company, a corporation organized and existing under the laws of the State of New Jersey and doing business within the State of New Jersey. Said property consists of monies payable as: dividends upon capital stock preferred or common; interest upon the corporation's bonds, indentures, notes or other formal instruments evidencing the indebtedness of the corporation; wages from the corporation; and other general cash obligations, which are payable to persons who have been unknown or whose whereabouts has been unknown for a period of 5 successive years or which have been unclaimed for a period of 5 successive years.

IV

In answer to the allegations of paragraph IV of the Complaint, the State of New Jersey admits that the State of Pennsylvania has indicated an intention to claim some of the property which may be the subject of this suit, but this defendant is without sufficient knowledge or information to form a belief as to the exact amount claimed by the State of Pennsylvania.

V

In answer to the allegations of paragraph V of the Complaint, Sun Oil Company is a corporation organized and existing under the laws of the State of New Jersey with its principal office within the State of New Jersey, as required by law, and is actively engaged in business opera-

tions within the State of New Jersey. It is admitted that the Sun Oil Company has business operations in the States of Pennsylvania and Texas and other states of the United States, but New Jersey is without sufficient information and knowledge to form a belief as to the issuance of certificates of authority issued to Sun Oil Company for the transaction of business in other states.

VI

In answer to the allegations of paragraph VI of the Complaint, it is admitted that plaintiff has mailed a copy of the Complaint to the Governor and the Attorney General of the State of New Jersey. As to the other allegations contained in paragraph VI of the Complaint, New Jersey is without sufficient knowledge and information to form a belief concerning same, and plaintiff is left to its proof thereof.

VII

In answer to the allegations of paragraph VII of the Complaint, it is admitted that a statement of claims against Sun Oil Company has been sent to the State of Texas by the Sun Oil Company. All of the allegations contained in paragraph VII of the Complaint to the effect that such claims are subject to escheat to the State of Texas are denied.

VIII

In answer to the allegations of paragraph VIII of the Complaint, it is admitted that there is pending in the Superior Court of New Jersey a civil action by the State of New Jersey against Sun Oil Company, under the provisions of Article 3, Chapter 37, Title 2A, New Jersey Statutes, whereby New Jersey seeks custody of monies payable on claims against Sun Oil Company as indicated in paragraph III above.

It is further admitted that neither the State of Texas nor any other state was made a party in said civil action pending in the Superior Court of New Jersey.

The allegation of paragraph VIII that a defense asserted by Sun Oil Company was overruled at the pretrial conference is denied, and this defendant asserts that all defenses raised by Sun Oil Company at the pretrial will be available to the Sun Oil Company at the trial when same is held.

On motion of the State of New Jersey, further proceedings in the aforesaid civil action in the New Jersey Superior Court have been stayed pending final disposition by this Court of the within action.

IX

In answer to the allegations of paragraph IX of the Complaint, it is admitted that Sun Oil Company contends that the State of Texas claims some of the property which is the subject of the pending civil action in the New Jersey Superior Court.

The allegations in paragraph IX of the Complaint that Texas has any claim to the funds held by Sun Oil Company, which are the subject of said action pending in the New Jersey Superior Court, are denied.

Further proceedings in the civil action pending in the New Jersey Superior Court have been stayed pending final disposition in this Court of the within action.

X

In answer to the allegations of paragraph X of the Complaint, New Jersey is without knowledge or information sufficient to form a belief as to the allegations in paragraph X of the Complaint, and they are denied.

XI

In answer to the allegations of paragraph XI of the Complaint, defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph XI of the Complaint, and they are denied.

XII

In answer to the allegations of paragraph XII of the Complaint, defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph XII of the Complaint and they are denied.

XIII

The allegations of paragraph XIII are denied.

XIV

The allegations of paragraph XIV are denied.

XV

In answer to the allegations contained in paragraph XV of the Complaint, it is admitted that the State of Pennsylvania lacks the power to escheat or take custody of personal property in the custody or possession of the defendant, Sun Oil Company, which is payable to persons who are unknown or whose whereabouts has been unknown, or which property has been unclaimed for more than five successive years.

In the face of the conflicting claims of Texas, Pennsylvania, New Jersey, and other states, it necessarily follows that New Jersey is the only state with power to escheat or take custody of the personal property which is the subject of this action.

XVI

In answer to the allegations of paragraph XVI of the Complaint, it is denied that the intangible personal property claimed by the State of Texas is in real, actual, and imminent danger of being declared escheated to the State of New Jersey by the New Jersey courts. The civil action pending in the New Jersey Superior Court wherein the State of New Jersey is plaintiff and the Sun Oil Company is defendant is an action for custody. Under the New Jersey law, no action to escheat said property can be taken until at least two years after judgment for custody is entered.

XVII

In answer to the allegations of paragraph XVII of the Complaint, it is admitted that the State of Texas is entitled to the opportunity to discover and develop all the relevant facts and circumstances pertaining to the subject property. The State of New Jersey and other parties in the action are entitled to the same opportunity to discover and develop all relevant facts and circumstances pertaining to the subject property. New Jersey stands ready to cooperate with the other parties in this cause in an effort to agree upon a stipulation of all relevant facts so that the questions involved in this matter may be expeditiously disposed of by the Court.

XVIII

In answer to the allegations of paragraph XVIII of the Complaint, it is admitted that the State of Texas is entitled to be heard by this Court on its claim to the right and power to escheat the subject property. The State of New Jersey is also entitled to like opportunity to establish its exclusive and superior right and power to take custody of or escheat the subject property.

XIX

WHEREFORE, the State of New Jersey prays:

a. That the prayer set forth in subparagraphs 3, 4, 5, 6, 7, and 8 of paragraph XIX of the Complaint be denied and that this Court decree that the State of New Jersey has sole and exclusive power to take custody of intangible personal property of the nature involved in this action and to escheat same if said property continues to remain unclaimed for the period of custody provided by New Jersey law.

b. That the State of New Jersey have such other and further relief as this Court may deem proper.

ARTHUR J. SILLS,
Attorney General of New Jersey
*Attorney for Defendant, State of
New Jersey.*

THEODORE I. BOTTER,
Assistant Attorney General,

CHARLES J. KEHOE,
Deputy Attorney General,

*Counsel for Defendant,
State of New Jersey.*

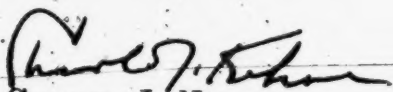
Charles J. Kehoe

Proof of Service

I, Charles J. Kehoe, Deputy Attorney General of the State of New Jersey, one of the attorneys for defendant, State of New Jersey, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 27th day of November, 1962, I served copies of the foregoing Answer of Defendant, State of New Jersey, to Complaint of State of Texas on each of the other parties to this action by depositing copies in a United States post office or mail box, with first class postage or air mail postage prepaid, and addressed to:

- (1) Honorable Price Daniel
Governor of Texas
State Capitol
Austin, Texas
- (2) Honorable Will Wilson
Attorney General of Texas
Courts Building
Austin 11, Texas
- (3) Honorable David L. Lawrence
Governor of Pennsylvania
State Capitol
Harrisburg, Pennsylvania
- (4) Honorable David Stahl
Attorney General of Pennsylvania
State Capitol
Harrisburg, Pennsylvania
- (5) Mr. Henry A. Frye
Attorney for the Defendant,
Sun Oil Company
Pepper, Hamilton & Scheetz
Fidelity-Philadelphia Trust Building
Philadelphia 9, Pennsylvania

It is further certified that copies of the Answer of Defendant, State of New Jersey, to Complaint of the State of Texas have been served on the states named in paragraph VI of plaintiff's Complaint by depositing copies in a United States post office or mail box, with first class or air mail postage prepaid and addressed to the Governors and Attorneys General of each of such states.



CHARLES J. KEHOE,

Deputy Attorney General of New Jersey.

LE COPY

Office-Supreme Court, U.S.

FILED

JAN 4 1963

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961

No. 13 ORIGINAL

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, ET AL.,

Defendants

**MOTION FOR LEAVE TO INTERVENE,
PROPOSED ANSWER AND BRIEF OF
INSURANCE COMPANY OF NORTH AMERICA**

ROBERT B. ELY, III,

*Attorney for Applicant, Insurance
Company of North America.*

1600 Arch Street,
Philadelphia 3, Penna.

MOTION FOR LEAVE TO INTERVENE.

And now this 3rd day of January 1963 comes Insurance Company of North America by its undersigned attorney and moves for leave to intervene as a defendant for the purpose of arguing that (a) the situs of intangible personal property of the type involved in the main proceedings is in the State in which the corporate obligor maintains its principal place of business; (b) neither Texas nor Pennsylvania has legislation providing for the escheat or custodial taking of such property, even if it be found to have a situs within either of these States; and (c) Applicant is under no obligation to pay over either to Texas, New Jersey or Pennsylvania any of the personal property described in its annexed proposed answer.

In support of this motion Applicant alleges the facts set forth in its annexed proposed Answer and advances the arguments set forth in the annexed Brief.

Proof of Service is hereto annexed.

Respectfully submitted,

ROBERT B. ELY, III,
Attorney for Applicant
Insurance Company of North America.

Philadelphia, Pennsylvania
January 4, 1963

PROPOSED ANSWER.

The intervening Defendant Insurance Company of North America, makes the following Answer to the successive paragraphs of the Complaint of the State of Texas as follows, and further alleges the New Matter thereafter set out:

I to V. Admitted.

VI to XII. Intervenor has no knowledge of the facts alleged and demands proof if material.

XIII and XIV. Intervenor is unable to affirm or deny the legal conclusions asserted as to the situs of intangibles of the type in controversy until this Court selects the correct rule, as Intervenor prays it may do.

XV. Intervenor concurs in the legal conclusion that Pennsylvania "lacks the power to escheat, and/or take custody of, the said property", regardless of whether its situs is in said Commonwealth, but for the reason that its General Assembly has ~~not~~ enacted any legislation exercising such power.

XVI. Intervenor has no knowledge of the facts alleged and demands proof if material.

XVII and XVIII. Admitted.

XIX. Intervenor joins in prayers (1) and (2) of the Plaintiff, that the Court take jurisdiction of the subject matter, and that it hear and determine the controversy among the parties. Intervenor's further prayers are recited below.

NEW MATTER.

XX. Intervenor is a corporation organized under the laws of the Commonwealth of Pennsylvania with principal place of business in the City and County of Philadelphia.

It is authorized to and does in all States of the Union, as well as in the District of Columbia, all forms of insurance except life, annuities, and title insurance.

XXI. Intervenor issues and will continue to issue checks and drafts at the rate of about one million items per year; and in numerous instances these instruments have remained and will remain uncashed for more than seven years.

XXII. With respect to varying numbers of such checks and drafts there have existed or occurred in each of the States of Texas, New Jersey and Pennsylvania, as well as in most of the other States of the Union, one or more of the following circumstances:

a. The depositary upon which the instrument was drawn.

b. The office of the agent of intervenor issuing the instrument.

c. The place of delivery of the instrument.

d. The last known address of the payee of the instrument.

e. The place of purchase, the place of delivery, or both, of the goods, wares or merchandise for which the instrument was issued in payment.

f. The place of contracting for, the place of rendering, or both, of the services for which the instrument was issued in payment.

g. The place in which occurred the loss insured by intervenor, for which the instrument was issued in payment.

h. The place in which was made the contract of insurance under which such loss occurred.

i. The location covered under such contract of insurance.

[If this Answer is permitted to be filed, there will be attached an Exhibit detailing these circumstances as to each item currently unpaid for more than seven years.]

XXIII. In no case of these uncashed checks or drafts has any legal action been brought to recover either the amount thereof or to enforce the obligation for payment of which the instrument was issued.

XXIV. It is provided by the Pennsylvania Act of 1713, Smith Laws 76, 12 Purdon's Supplement 31, that "all actions of debt granted upon any lending or contract without specialty . . . shall be commenced and sued within the time and limitations hereafter expressed, and not after; that is to say . . . the said actions for . . . debt . . . within six years next after the cause of such actions or suit, and not after."

XXV. The Texas Statute of Limitations (Vernon's Statutes sec. 5527) as to claims of the type here in controversy reads in relevant part:

"There shall be commenced and prosecuted within four years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions for debt where the indebtedness is evidenced by or founded upon any contract in writing."

WHEREFORE, Intervenor, Insurance Company of North America, prays that the Court, after such hearing as it may direct, may conclude

(a) That the personal property listed in the Exhibit to this Answer and held by Intervenor has a situs in Pennsylvania;

(b) That Pennsylvania has no legislation providing for the escheat or custodial taking of such property; and therefore

(c) Intervenor is under no duty to report or pay over to any State, with or without escheat, any portion of such property.

ROBERT B. ELY, III,
Attorney for Intervenor
Insurance Company of North America

BRIEF.

a) Reports of Opinions of Courts below

There are none; since these proceedings are in the Court's original jurisdiction.

b) Grounds for invoking the Court's jurisdiction

In accordance with *this Court's Rule 9.2*, providing that "... motions in original actions shall be governed, so far as may be by the Federal Rules of Civil Procedure," Applicant invokes this Court's jurisdiction to permit intervention upon the basis of *F.R.C.P., 24(a) and (b)* reading in relevant parts: "(a) *Intervention of Right*. Upon timely application anyone shall be permitted to intervene in an action . . . (2) When the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action . . . (b) *Permissive intervention* . . . (2) When an applicant's claim or defense and the main action have a question of law or fact in common.

c) Statutes involved

Pennsylvania Act of 1713, 1 Smith Laws 76, 12 Purdon's Supplement 31, reading in relevant part:

"all actions of debt granted upon any lending or contract without specialty . . . shall be commenced and sued within the time and limitations hereafter ex-

pressed, and not after; that is to say . . . the said actions for . . . debt . . . *within six years next after the cause of such actions or suit, and not after.*" (Emphasis supplied.)

Texas Statutes of Limitations, Vernons Statutes Art. 5527.

"There shall be commenced and prosecuted *within four years after the cause of action shall have accrued*, and not afterward, all actions or suits in court of the following description:

1. Actions for debt where the indebtedness is evidenced by or founded upon any contract in writing." (Emphasis supplied.)

The relevant portions of Pennsylvania's Escheat Laws, Act of 1889, P.L. 66, Sec. 3, as amended by the Act of 1953, P.L. 986, No. 247, Sec. 1, 27 P.S. 333 (b) and (c), and of Texas' Unclaimed Property Laws, Vernon's Statutes Articles 3272 and 3272(a), *both providing for periods of dormancy of seven years*, are set out on pages C1 to C3 and A1 to A3 of the Texas Brief in support of Motion for Leave to File Complaint.

d) *Question presented*

Should a timely application to intervene be granted in an escheat contest among three States having various contacts with certain unpaid checks, where:

(1) the Applicant, which has issued similar instruments under similar circumstances, and the original parties all raise the same legal question of escheat situs of such debts;

(2) Applicant questions the applicability of the escheat laws of two of these States to such instruments, even if their situs were found to be in either or both of these States;

(3) Judgment in the main action is almost certain to decide both questions and to bind Applicant as well as the original parties;

(4) Applicant's interest in the second question is opposed by one original party (the State of its incorporation and main office) both here and in other litigation pending against Applicant, and cannot be supported by the other principal parties?

e) *Statement of the Case*

These are proceedings in the Court's original jurisdiction, in which Texas asserted in its Complaint (paragraph XIX), in opposition to the alleged claims of New Jersey and Pennsylvania, "The state of Texas, alone has the power to assert a claim of escheat against [certain property and is alone authorized to proceed, in accordance with the statutes of Texas governing escheat to obtain a judgment declaring said property escheated to the state of Texas.]"

The property is described (Complaint paragraph XI) as approximately \$38,000 in miscellaneous sums of money allegedly owed by a New Jersey corporation having offices in Pennsylvania and Texas (Complaint, paragraph V), which the Company is alleged (Complaint, paragraph VII) to consider "subject to escheat to Texas."

In its Answer (paragraph XIX) New Jersey contests the claim of Texas and prays for a decree "that the State of New Jersey has sole and exclusive power to take custody of intangible personal property of the nature involved in this action and to escheat same if said property continues to remain unclaimed for the period of custody provided by New Jersey law."

Pennsylvania (in paragraph XIX of its Answer) prays for "a decree . . . recognizing the Commonwealth of Pennsylvania's right to escheat or take into custody all or any part of the funds or other property in question."

Defendant Sun Oil Company (in paragraph XI of its Answer) admits that it has filed a report of the property

in question as escheatable to Texas, but reserves the right "to claim any offsets, counterclaims, limitations or other defenses it may have under the custodial, unclaimed property or escheat laws of the State or States determined to have jurisdiction."

f) *Argument*

Applicant is incorporated under the laws of one of the States parties to the main action. It has offices in all of these States. It has issued to payees with last known addresses in all of these States unpaid checks and drafts of the type involved here. See attached Proposed answer.

These circumstances raise the same legal questions as are raised by the Answer of the Defendant Sun Oil Company:

(a) What is the situs of such intangible personal property for purposes of escheat or custodial taking?

(b) Does the law of the State of situs provide for such escheat or taking?

The existence of these common questions is sufficient for permissive intervention under *Federal Rules of Civil Procedure 28(b)*, *supra*.

Furthermore, Applicant's interest in these questions, which a judgment in the main action will decide in a manner binding on Applicant, is adversely, rather than adequately represented by the present parties. These are the conditions for intervention as of right under *Federal Rules of Civil Procedure 28(a)*, *supra*.

From previous decisions and from this Court's discussion during arguments on *Western Union v. Commonwealth of Penna.*, 368 U. S. 71 82 S. Ct. 199 (1961), it seems that the most likely criteria for situs are: State of incorporation of the corporate obligor, or of its principal place of business (favored by Applicant) or of last known address of payee. Any of these would place the situs of some or all of Sun Oil's and of Applicant's unpaid checks and drafts in Texas, Pennsylvania or New Jersey. This

raises the question of the sufficiency of the laws of these States to provide for escheat or collection of such items. The decision of this question will bind Sun Oil, Applicant and all similarly situated corporations.

Applicant contends that the laws of Pennsylvania and Texas do not provide for such escheats or takings. None of the present parties can or does advance this argument. Applicant's representations by them is inadequate and, in fact, adverse.

None of the States can or does presume to argue the sufficiency of either of the other States' internal escheat laws. Each State merely denies that the situs of the property in question is in either of the other States. (See Complaint of Texas, paragraphs XIV and XV; Answer of Pennsylvania, paragraphs X and XI; Answer of New Jersey, paragraphs IX and XVIII.)

Pennsylvania has already contested with Applicant the sufficiency of its escheat laws as to property of the type in question in *Alpern v. Ins. Co. of North America*, 77 *Dauphin County Reports* 383 (1961). In affirming that this action was brought in the wrong court, the Supreme Court of Pennsylvania recited in *Stahl v. Ins. Co. of North America*, 408 Pa. 483, 184 A. 2d 568 (1962) the announced intention of the Commonwealth to pursue its litigation with Applicant "in the proper tribunal." Such a suit has, in fact, begun in the Court of Common Pleas No. 5 of Philadelphia County, as of December Term, 1962, No. 771. Pennsylvania's representation of its domestic corporations is therefore adverse on the issues here involved.

Any judgment favorable to Pennsylvania in the present main action will be used by it against Applicant, in that Philadelphia suit.

Sun Oil Company would be hard put to represent Applicant; since Sun has *conceded its checks are escheatable to Texas* under laws no more effective than Pennsylvania, as argued below. See Answers of Sun Oil, paragraph VII and Complaint of Texas, paragraph VII. Thus, the reservation in paragraph XI of Sun's Answer

of the right to contest Pennsylvania and Texas escheat laws, may not be effective either for it or for Applicant.

Actually, neither Texas nor Pennsylvania legislation provides for escheat or collection of property of the type involved here; since in each of these States the Statute of Limitations (See Section c above) runs before the period of dormancy for escheat expires (See Brief of Texas in Support of Motion for Leave to File Complaint pp. A1 to A3 as to Texas laws and pp. C1 to C3 as to Pennsylvania). These Statutes of Limitations bar actions for debts of the type here involved after 4 and 6 years, respectively, while the periods of dormancy are 7 years in both cases.

To provide for escheat of collections such as sought here requires either

a) a period of dormancy shortened to less than that of limitations, as in New Jersey's Act of 1951, N.J.S.A. 2A-37-29 (Texas Brief, *supra*, p. B1) and in Rhode Island's General Laws, Chapter 33-21-28;

b) A removal* of the bar of limitations as in Pa. Act of 1915 P.L. 878, sec. 15, 27 P.S. 261, dealing with banks *not here involved*; Pa. Act of 1937 P.L. 2063, sec. 13, 27 P.S. 446, dealing with specialty debts *not here involved*; Pa. Act of 1949 P.S. 1140, sec. 13, 27 P.S. 473, dealing with life insurance companies *not here involved*;

Arizona	Code of 1956, Sec. 44.365.01
California	Laws of 1959, Ch. 1809, Sec. 1515
Delaware	Code of 1953, Sec. 1140
Michigan	Statutes Annotated, Sec. 1153 (59)
New Mexico	Laws of 1959, Ch. 132, Sec. 17
New York	Abandoned Property Law, Sec. 1400
Oregon	Revised Statutes, Sec. 98.376
Virginia	Laws of 1960, Ch. 330, Sec. 55.210.17

* Prospectively operative if fairly enacted.

These requirements have not been met by either Texas or Pennsylvania as to the property here involved, nor by Arkansas, Connecticut, Florida, Idaho, Kentucky, Louisiana, Massachusetts, North Carolina, Oklahoma, Utah, and Washington, mentioned in paragraph VI of the Complaint as having abandoned property statutes.

As to *timeliness* of the present Application: It could not have been made until the answers of all original parties were filed, so that Applicant could know and analyze their positions. This having been done, Applicant has proceeded with all deliberate haste.

As to the *effect of intervention*: it would not complicate or delay the main action; since it would introduce no new questions, but would allow those presented to be argued more fully and from all sides, which might not be possible if Sun Oil Company were the only private defendant.

Respectfully submitted,

ROBERT B. ELY, III,
Attorney for Applicant Insurance Company of North America.

PROOF OF SERVICE.

I, Robert B. Ely, III, Attorney for the Applicant Insurance Company of North America and a member of the bar of the Supreme Court of the United States, hereby certify that on the 4th day of January 1963 I served copies of the foregoing Motion for Leave to Intervene, Proposed Answer and Brief, on each of the parties to the main proceeding, by depositing copies in a United States post office or mail box, as certified mail with first class or air mail postage prepaid, as indicated, and addressed to

Proof of Service.

- (1) Honorable Price Daniel
Governor of Texas
State Capitol
Austin, Texas (By Air Mail)
- (2) Honorable Will Wilson
Attorney General of Texas
Courts Building
Austin 11, Texas (By Air Mail)
- (3) Honorable Richard J. Hughes
Governor of New Jersey
State Capitol
Trenton, New Jersey
- (4) Honorable David D. Furman
Attorney General of New Jersey
State Capitol
Trenton, New Jersey
- (5) Honorable David L. Lawrence
Governor of Pennsylvania
State Capitol
Harrisburg, Pa.
- (6) Honorable David Stahl
Attorney General of Pennsylvania
State Capitol
Harrisburg, Pennsylvania
- (7) Henry A. Frye, Esq.,
Attorney for Defendant Sun Oil Company
Fidelity-Phila. Trust Building
Philadelphia, Pennsylvania

ROBERT B. ELY, III,
Attorney for Insurance Com-
pany of North America,
Applicant for Intervention.

FILE COPY

MOTION FILED JAN 14 1963

IN THE

Supreme Court of the United States

Office-Supreme Court, U.S.
FILED

JUN 3 1963

JOHN F. DAVIS, CLERK

October Term, 1962

No. 13 Original

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, ET AL.,

Defendants,

and.

STATE OF FLORIDA,

Intervenor.

MOTION FOR LEAVE TO INTERVENE
(STATE OF FLORIDA).

and.

ANSWER OF THE STATE OF FLORIDA
AS INTERVENOR.

RICHARD W. ERVIN,
Attorney General
of Florida,

FRED M. BURNS,
Assistant Attorney General
of Florida,
Capitol Building,
Tallahassee, Florida

ATTORNEYS FOR THE STATE
OF FLORIDA, INTERVENOR.

IN THE
Supreme Court of the United States

October Term, 1962

No. 13 Original

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, ET AL.,

Defendants.

**MOTION FOR LEAVE TO INTERVENE
(STATE OF FLORIDA)**

The State of Florida, a sovereign state of the United States of America, by and through its Attorney General, moves the Court for an order permitting it to intervene in the above entitled cause, and permitting its proposed Answer of Intervention, annexed hereto, to be filed as the Answer of Intervention of the State of Florida in this action, because:

1. This intervenor would doubtless be bound by the judg²

ment or decree to be entered in this cause, and the representation of the state's interest by the existing parties to the action may be inadequate.

2. The claims and defenses of this intervenor, and those of the states of Texas, New Jersey, and Pennsylvania, parties to the main proceedings herein, have questions of law and fact in common.

3. Rapidly multiplying state statutes and laws for the escheat and custody of abandoned and unclaimed property, originally applying only to land and other tangible things, have moved into the field of intangible personal property, thereby raising issues as to the right to the possession and custody of escheated or abandoned intangible personal property as between the states of the residence of the creditor and of the debtor and the creditor, as well as where the evidence of the intangible is held or located. In many instances two or more states lay claim to and the right of possession to the same debt or obligation constituting an intangible and the right to escheat the same to the state.

4. The cases of Connecticut Mutual Insurance Company v. Moore, 333 U. S. 541, 68 S. Ct. 682, 92 L. Ed. 863, and Standard Oil Company v. New Jersey, 341 U. S. 428, 71 S. Ct. 822, 95 L. Ed. 1078, appear to form the basis for two or more states laying claim to the same item of intangible personal property under their respective escheat or custodial statutes and laws relating to intangible personal property, and claiming the right to escheat the same to each of said states.

5. This Court, in Western Union Telegraph Company v. Pennsylvania, 368 U. S. 71, 82 S. Ct. 199, 7 L. Ed. 139, seems to have recognized the difficulties presented by the above two

cases mentioned in paragraph "4" above, and suggested the procedure to resolve the same.

Other states, particularly California and Massachusetts, have expressed an interest in this litigation and a possible desire to join in this intervention. The State of Florida hereby gives her consent to such a joinder, and petitions the court for an order permitting such intervention by the filing of a declaration of joinder and the filing of a list of their interests like or similar to Florida's Exhibit "A" attached to her intervention pleading.

**RICHARD W. ERVIN, as
Attorney General
of Florida**

**FRED M. BURNS, as
Assistant Attorney General
of Florida,**

**Capitol Building
Tallahassee, Florida.**

**ATTORNEYS FOR THE STATE
OF FLORIDA, INTERVENOR.**

IN THE
Supreme Court of the United States

October Term, 1962

No. 13 Original

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, ET AL.,

Defendants,

and

STATE OF FLORIDA,

Intervenor.

**ANSWER OF THE STATE OF FLORIDA
AS INTERVENOR.**

The STATE OF FLORIDA, a sovereign state, intervenor herein, for its pleading in intervention, says that:

1. It admits the allegations of fact in paragraphs numbered "I," "II," "III," "IV," "V" and "VI" of the Complaint herein.

2. It is without actual knowledge of the matters of fact alleged in and by paragraphs numbered "VII," "VIII," "IX,"

"X," "XI," and "XII" of the Complaint herein; however, for the purposes of this litigation only, they are admitted.

3. The allegations of paragraphs numbered "XIII," "XIV," and "XV" of the Complaint herein raise issues of law, based on facts otherwise alleged in the said Complaint, as to the situs of abandoned or escheated personal property for the purpose of taking possession of such property and making disposition thereof.

4. It admits the allegations of fact in paragraphs numbered "XVI," "XVII," "XVIII," and "XIX" of the Complaint herein; except that the State of Florida, as intervenor, claims the same rights and remedies as does the State of Texas as to properties subject to escheat or custody by the State of Florida under applicable facts and circumstances, and laws and statutes applicable thereto.

5. The State of Florida, for the purposes of its claim as to the properties hereinafter set out and described, and any claim the States of Texas, New Jersey, Pennsylvania, or any other state, may have or make against such properties hereby adopts and repeats the allegations of fact of the plaintiff in its Complaints herein, insofar as the same may be applied to the rights and interests of the State of Florida in this litigation.

6. The Sun Oil Company, one of the defendants herein, under and pursuant to the terms and requirements of Chapter 61-10, Laws of Florida, Acts of 1961, also referred to as Chapter 717, Florida Statutes, 1961, known and referred to as the Florida disposition of unclaimed property act or statute, made return of certain unclaimed or abandoned properties, within the purview of the said statutes, held by it, to the Comptroller of the State of Florida, who is charged with the administration of the said Florida unclaimed property statutes, which statutes

are substantially identical with the Uniform Disposition of Unclaimed Property Act, as approved by the National Conference on Uniform Laws in 1955. This unclaimed or abandoned property was fully identified to the Attorney General of Florida, by the defendant Sun Oil Company, by its letter dated November 6, 1962, signed by its agent Tom E. Bryan, a copy of which letter is hereby attached as Florida's Exhibit "A" and made a part hereof by reference.

7. The Sun Oil Company, a New Jersey corporation, one of the defendants herein, is alleged, in paragraph numbered "V" of the Complaint herein, to be a New Jersey corporation, under whose statutes and laws said corporation is required to have and maintain within the said State of New Jersey a principal place of business; and, as further alleged in said paragraph numbered "V," also maintains business offices within the States of Pennsylvania and Texas, in addition to the said principal place of business in New Jersey. We are not advised from which of the said three company offices were issued the uncashed checks and other intangibles described and set out in Florida's Exhibit "A" hereto attached and made a part hereof by reference. Where such uncashed checks or other intangible were issued in either Pennsylvania or Texas, or were issued in New Jersey, and are payable to a payee or obligee having his domicile in a state other than New Jersey, Pennsylvania or Texas, two or more states, including the state of the domicile of the payee or obligee, find basis for claiming the escheat or possession of the same obligation under their respective statutes and laws. The Sun Oil Company should not be required to make payment of the same obligation to two or more statutes. The issue arises as to which of the said states is entitled to escheat or possession of the unclaimed or abandoned intangible obligation. Florida claims that escheat or possession should be by the state of the domicile or residence of the payee or obligee.

WHEREFORE, the STATE OF FLORIDA, intervenor herein, prays that:

A. This Court take jurisdiction of the parties and subject matter of this litigation.

B. This Court hear and determine the controversy between the parties, including this intervenor, either by referring this case to a Master in Chancery, or a Federal District Court, or in such other matter as the Court deems appropriate, for findings of fact and law and recommendations to this Court.

C. A decree be entered adjudging which state is entitled to escheat or take possession of unclaimed or abandoned intangible obligations or property, where the same is issued through the home office of a corporation to a payee or obligee domiciled in another state; also where issued through a business office of a corporation, located in a state other than that of incorporation, to a payee or obligee domiciled in, or residing in, a third state.

D. A decree be entered adjudging which state is entitled to escheat or take possession of unclaimed or abandoned intangible obligations or property where the domicile or residence of the payee or obligee is unknown; including claims by states wherein such a corporation was incorporated as well as other states where in it may maintain business offices.

RICHARD W. ERVIN, as Attorney
General of Florida.

FRED M. BURNS, as Assistant
Attorney General of Florida,
Capitol Building,
Tallahassee, Florida

ATTORNEYS FOR THE STATE
OF FLORIDA, INTERVENOR.

SUN OIL COMPANY

SOUTHERN DIVISION
LEGAL DEPARTMENT

P. O. Box 2880
DALLAS 21, TEXAS

November 6, 1962

Hon. Richard W. Irvin
Attorney General of Florida
State Capitol
Tallahassee, Florida

Re: State of Texas vs. Sun Oil Co., et al

Dear Mr. Irvin:

I am informed that the State of Florida contemplates intervening in the above case now pending before the Supreme Court of the United States and that you desire a list of the items reported to Texas held for the last fifteen years payable to persons whose last known addresses were in Florida.

Our cashed list furnished to the State of Texas shows the following uncashed checks issued by Sun Oil Company, Southwest Division, at Dallas, Texas:

Item No.	Page	Name & Address	Amount	Date
201	8	C. B. Allen & Wife, Roxie Bushnell, Florida	\$10.00	No date
236	9	G. C. Cannon Branford, Florida	14.66	8-20-47
265	10	H. E. Dickens Benton Springs, Florida	.04	1-27-41
290	11	E. N. Goodbread, et ux Lake City, Florida	23.00	7- 4-47
291	11	J. N. Grainger, et ux Felda, Florida	4.00	12-14-42
312	12	E. S. Hull and Sallie Felda, Florida	1.00	3-27-40
380	14	Clemmie Robinson Sneads, Florida	25.00	No date
389	15	Lottie V. Scott	17.00	1-31-46
390	15	937 N.W. 23rd Ave. Miami, Florida	17.00	1- 7-46

There were some other items reported to the State of Texas which are less than 15 years old because Texas required a filing of all items 7 years old.

Hoping the foregoing information is satisfactory, I am

Yours very truly,
TOM E. BAYAN

TEB:clc

cc: Mr. John Leech
Philadelphia Office
Mr. Henry A. Frye
Pepper, Hamilton & Scheetz
Fidelity-Philadelphia Trust Bldg.
Philadelphia 9, Pa.
Mr. Charles D. Freeman
Dallas Office

Exhibit A

PROOF OF SERVICE

I, Richard W. Ervin, Attorney General of Florida, one of the attorneys for the State of Florida, petitioner herein, and member of the Bar of the Supreme Court of the United States, hereby certify that on January , 1963, I served copies of the foregoing Motion for Leave to Intervene in this cause, together with Florida's proposed intervention answer, on each of the following parties and persons by depositing said copies in a United States post office or mail box, with first class or air mail postage prepaid and addressed as follows:

Honorable Will Wilson
Attorney General of Texas
Courts Building
Austin 11, Texas

Honorable Arthur J. Sills
Attorney General of New Jersey
State Capitol
Trenton, New Jersey

Honorable David Stahl
Attorney General of Pennsylvania
State Capitol
Harrisburg, Pennsylvania

Honorable Henry A. Frye
Pepper, Hamilton & Scheetz
2001 Fidelity-Philadelphia Trust Building
Philadelphia 9, Pennsylvania

Honorable Stanley Mosk
Attorney General of California
State Building
San Francisco 2, California

Honorable Edward J. McCormack, Jr.
Attorney General of Massachusetts
State House
Boston, Massachusetts

Honorable H. Powell Yates
Third Vice President
Metropolitan Life Insurance Company
One Madison Avenue
New York 10, New York

Honorable Peter F. Oates
Assistant Attorney General
Western Union Telegraph Company
60 Hudson Street
New York 13, New York

I further certify that copies of the said Motion for Leave to Intervene and proposed intervention answer have also been served on the states named in paragraph VI of the plaintiff's Complaint by depositing copies thereof in a United States post office or mail box, addressed to the Attorneys General of each of the said states, with first class or air mail postage prepaid.

RICHARD W. ERVIN
Attorney General of Florida
Capitol Building
Tallahassee, Florida

FILE COPY

Office-Supreme Court, U.S.

FILED

FEB 1 1963

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1961.

No. 13 Original.

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, et al.,

Defendants.

**BRIEF OF DEFENDANT, SUN OIL COMPANY, IN
SUPPORT OF MOTION OF STATE OF FLORIDA
FOR LEAVE TO INTERVENE**

HENRY A. FRYE,

PEPPER, HAMILTON & SCHEETZ,

2001 Fidelity-Philadelphia Trust Bldg.,

Philadelphia 9, Penna.,

*Attorney for Defendant, Sun Oil
Company, 1608 Walnut Street,
Philadelphia 3, Penna.*

IN THE
Supreme Court of the United States.

October Term, 1961.

No. 13 ORIGINAL

STATE OF TEXAS,

Plaintiff.

v.

STATE OF NEW JERSEY, ET AL.

Defendants.

**BRIEF OF DEFENDANT, SUN OIL COMPANY, IN
SUPPORT OF MOTION OF STATE OF FLORIDA
FOR LEAVE TO INTERVENE**

I. STATEMENT OF THE CASE.

This is an original proceeding in which the State of Texas has sued the States of New Jersey and Pennsylvania seeking a resolution of the conflicting claims of these three States to certain unclaimed debts and other property in the custody of Sun Oil Company, a named defendant, which is a New Jersey corporation with its principal office in Pennsylvania and which is qualified to do business in the State of Texas. This Court has taken jurisdiction and the State of Florida has now filed a motion for leave to intervene and a proposed answer to the complaint of the State of Texas.

II. ARGUMENT.

The motion and answer of the State of Florida establish that the last known addresses of certain obligees of debts owed by Sun and reported to Texas are in the State of Florida. Florida claims that escheat or possession of unclaimed or abandoned intangible obligations should be by the State of the domicile or residence of the payee or obligee. In its answer Sun Oil Company, referring to the property claimed by Texas, stated in part (at Paragraph XI):

"Sun Oil Company can neither admit nor deny that the situs of such property and jurisdiction thereof for the purposes of escheat lies in Texas or in any other State, in view of the adverse claims of defendant States of New Jersey and Pennsylvania and the possible claims of other States to this and other similar property, and reserves to itself the right to claim any offsets, counterclaims, limitations or other defenses it may have under the custodial, abandoned property or escheat laws of the State or States determined to have jurisdiction."

In Paragraph XI of its answer Sun Oil Company states its position further as follows:

"As to the intangible personal property referred to in Paragraph XVI, this defendant admits that it is in real, actual and imminent danger of being compelled by the courts of more than one State to deliver all or a portion or portions of such property to those States, without protection from the claims of other States, and therefore, submits to the jurisdiction of this Court for the purpose of disposing of the conflicting claims of plaintiff, of the other defendants and of the several other States which are notified of this proceeding."

By the filing of its motion for leave to intervene, Florida has joined Texas, New Jersey and Pennsylvania in actively asserting claims to property in the custody of Sun Oil Company. The claim of Florida should be adjudicated together with the claims of the other States already parties to the action in order that Sun-Oil Company may not be subjected to multiple suits or be compelled by the courts of more than one State to deliver all or a portion of the unclaimed property in its possession to those States.

Therefore, and in accordance with the doctrine announced by this Court in *Western Union Co. v. Pennsylvania*, 368 U. S. 71 (1961), defendant Sun Oil Company joins in the motion of the State of Florida for leave to intervene in these proceedings.

Respectfully submitted,

HENRY A. FRYE,

*Attorney for Defendant,
Sun Oil Company.*

PROOF OF SERVICE.

I, Henry A. Frye, attorney for Defendant, Sun Oil Company, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 31st day of *January*, 1963, I served copies of the foregoing Brief of Defendant, Sun Oil Company, in Support of Motion of State of Florida for Leave to Intervene on each of the other parties to this action by depositing copies in a United States post office or mail box, as certified mail with first class postage or air mail postage prepaid, and addressed to:

- (1) Honorable John B. Connally
Governor of Texas
State Capitol
Austin, Texas
- (2) Honorable Waggoner Carr
Attorney General of Texas
Courts Building
Austin 11, Texas
- (3) Honorable Richard J. Hughes
Governor of New Jersey
State Capitol
Trenton, New Jersey
- (4) Honorable Arthur J. Sills
Attorney General of New Jersey
State Capitol
Trenton, New Jersey
- (5) Honorable Farris Bryant
Governor of Florida
State Capitol
Tallahassee, Florida

Proof of Service

5

- (6) Honorable Richard W. Ervin
Attorney General of Florida
State Capitol
Tallahassee, Florida
- (7) Honorable William W. Scranton
Governor of Pennsylvania
State Capitol
Harrisburg, Pennsylvania
- (8) Honorable Walter E. Alessandroni
Attorney General of Pennsylvania
State Capitol
Harrisburg, Pennsylvania

It is further certified that copies of the Brief of Defendant, Sun Oil Company, in Support of Motion of State of Florida for Leave to Intervene have been served on the States named in Paragraph VI of Plaintiff's Complaint by depositing copies in a United States post office or mail box, as certified mail with first class postage or air mail postage prepaid and addressed to the Governors and Attorneys General of each of such States.

HENRY A. FRYE,
*Attorney for Defendant,
Sun Oil Company.*

FILE COPY

MOTION FILED MAR 19 1963

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1962.

NO. 13 ORIGINAL

STATE OF TEXAS,

Plaintiff,

vs.

STATE OF NEW JERSEY, *et al.*,

Defendants.

**MOTION OF THE STATE OF ILLINOIS FOR LEAVE
TO INTERVENE IN THIS CASE AND TO FILE THE
PETITION IN INTERVENTION SUBMITTED HERE-
WITH.**

BRIEF IN SUPPORT OF FOREGOING MOTION.

WILLIAM G. CLARK,

Attorney General of the State of Illinois,
160 N. La Salle Street, Suite 900,
Chicago 1, Illinois (FI 6-2000),

*Attorney for the State of Illinois,
Petitioner.*

WILLIAM C. WINES,

Assistant Attorney General of Illinois,

Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1962.

NO. 13 ORIGINAL

STATE OF TEXAS,

Plaintiff,

VS.

STATE OF NEW JERSEY, *et al.*,

Defendants.

**MOTION OF THE STATE OF ILLINOIS FOR LEAVE
TO INTERVENE IN THIS CASE AND TO FILE THE
PETITION IN INTERVENTION SUBMITTED HERE-
WITH.**

The State of Illinois, by William G. Clark, her Attorney General, respectfully presents herewith under separate cover and seeks leave to file a petition in intervention in this case.

Suggestions in support of this motion are submitted in the attached brief.

WILLIAM G. CLARK,

Attorney General of the State of Illinois,
160 N. La Salle Street, Suite 900,
Chicago 1, Illinois (FI 6-2000),

*Attorney for the State of Illinois,
Petitioner.*

WILLIAM C. WINES,

Assistant Attorney General of Illinois,

Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1962.

NO. 13 ORIGINAL

STATE OF TEXAS,

Plaintiff,

vs.

STATE OF NEW JERSEY, *et al.*,*Defendants.*

BRIEF IN SUPPORT OF FOREGOING MOTION.

In 1961 Illinois adopted the "Uniform Disposition of Unclaimed Property Act", (Ill. Rev. Stats., 1961, Ch. 141, Pars. 101-130, Vol. II, pp. 2385-2388). That Act is printed in full text, Appendix I, *post*.

Illinois has many "financial or banking institutions" as defined in that Act. Most if not all of these institutions are debtors on deposits or other items of direct obligation, the depositor or other direct obligee being a non-resident of Illinois.

On the other hand, other States which have enacted the Uniform Unclaimed Property Act or other legislation contemplating the "escheat" or impounding of long unclaimed choses in action have within their territorial boundaries many banks and other financial institutions which are indebted to residents of Illinois who have either died with Illinois as their domiciles or who can not be found, their last known place of residence being or having been Illinois.

Thus Illinois has an interest in all of the questions sought to be adjudicated in the instant case.

The Attorney General of Illinois and his staff have studied the materials now before the Court in this case.

Illinois' Attorney General is persuaded that the briefs now before this Court do not adequately present the considerations noted in this brief.

I.

The right of a State to escheat or impound moneys due upon intangible choses in action does not depend primarily upon whether that State is the State of the debtor's incorporation or upon whether that State is the State of the decedent or last known owner's last known residence. The rights depend upon the laws of the State in which the indebtedness was created.

Thus far the altercation presented in this Court may thus be briefly but correctly stated:

DOES THE RIGHT TO ESCHATEAT OR IMPOUND MONEYS DUE TO PERSONS WHO CAN NOT BE FOUND INHERE IN THE STATE IN WHICH THE DEBTOR WAS INCORPORATED, IN THE INSTANT CASE NEW JERSEY, OR IN THE STATE OF THE LOST PERSON'S RESIDENCE OR LAST KNOWN RESIDENCE, IN THIS CASE TEXAS?

But the elementary considerations suggested in this brief demonstrate that the question stated above arises **only when**

the laws of the State in which the debt or other obligation was created are silent upon the point and when that State lays no claim to the funds that are the property of the deceased or missing person.

The briefs thus far filed, so far as we are aware, discuss only the Due Process Clause of the Fourteenth Amendment and the provisions of the Constitution of the United States.

Where the laws of the State in which the debt was created are silent upon the mode by which the right to collect the debt may be transferred, whether by assignment for or without consideration and with or without notice of defenses, by testamentary bequest, by devolution under the laws of intestacy or escheat, then the general rule appears to be that it is the domicile of the transferor or the last known domicile of a missing person, not the laws of the State in which the debtor corporation was incorporated, that determine transferability with one important exception:

Where the chose in action consists, not in a mere simple promise, condition or unconditional, to pay a debt in money or deliver a quantity of goods but constitutes a "membership" in a society, such as an insurance corporation or perhaps a building and loan association, so that all of the members' rights must be determined by the laws of the same State in order to avoid manifest injustice by permitting a sister State to enlarge the rights of her own residents, then the laws of the State of incorporation govern transferability regardless of the laws of the State in which the indebtedness was created and irrespective of the laws in which transfer, e.g., by escheat is attempted. *Modern Woodmen v. Mixer*, 267 U. S. 544.

If Illinois is granted leave to intervene in this case, she will urge that the Court declare the exigent rules to be these:

Where the laws of the State creating the indebtedness engraft upon that indebtedness the terms under which it can be transferred, by escheat or otherwise, those laws govern unless the obligation constitutes a membership in a complex organization within the rule of *Modern Woodmen v. Mixer*, 267 U. S. 544.

Where the laws of the State creating the indebtedness are silent, then the right to escheat the funds traditionally inures to the State of the decedent's domicile or the missing person's last known domicile. Florida's brief correctly so states and the authorities cited in that brief correctly so hold.

For authorities other than *Modern Woodmen v. Mixer*, 267 U. S. 544, Illinois refers at this plenary juncture of this case, where plenary canvass of the question is inappropriate, to the briefs of her sister States now on file in this Court.

Respectfully submitted,

WILLIAM G. CLARK,

Attorney General of the State of Illinois,
160 N. La Salle Street, Suite 900,
Chicago 1, Illinois (FI 6-2000),

*Attorney for the State of Illinois,
Petitioner.*

WILLIAM C. WINES,

Assistant Attorney General of Illinois,

Of Counsel.

APPENDIX. I.

UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

AN ACT relating to the disposition of unclaimed property, to make uniform the law with reference thereto, to provide penalties for the violation thereof and to make an appropriation with relation thereto. Approved Aug. 17, 1961, L. 1961, p. 2385, H. B. No. 774.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

101. Definitions] § 1. As used in this Act, unless the context otherwise requires:

(a) "Banking organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this State.

(b) "Business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of 2 or more individuals.

(c) "Financial organization" means any savings and loan association, building and loan association, credit union, co-operative bank or investment company, engaged in business in this State.

(d) "Holder" means any person in possession of property subject to this Act belonging to another, or who is trustee in case of a trust, or is indebted to another or an obligation subject to this Act.

(e) "Life insurance corporation" means any association or corporation transacting within this State the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(f) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this Act, or his legal representative.

(g) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

(h) "Utility" means any person who owns or operates within this State, for public use, any plant, equipment, property, franchise, or license for the transmission of communication or the production, storage, transmission, sale, delivery, or furnishing of electricity, water steam, or gas.

(i) "Director" means the Director of the Illinois Department of Financial Institutions.

102. Property held or owing by banking or financial institution—Presumption of abandonment.] § 2. The following property held or owing by a banking or financial organization is presumed abandoned:

(a) Any demand, savings, or matured time deposit made in this State with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within 15 years:

1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) Corresponded in writing with the banking organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(b) Any funds paid in this State toward the purchase of withdrawable shares or other interest in a financial organization, or any deposit made therewith in this State, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within 15 years:

(1) Increased or decreased the amount of the funds, or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

(c) Any sum payable on checks certified in this State or on written instruments issued in this State on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, and traveler's checks, that has been outstanding for more than 15 years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within 15 years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(d) Any funds or other personal property, tangible or intangible, removed from the safe deposit box or any other

safekeeping repository or agency or collateral deposit box in the State on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than 7 years from the date on which the lease or rental period expired.

103. Funds held and owing by life insurance company—Presumption of abandonment.] § 3. (a) Unclaimed funds, as defined in this Section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this State. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds", as used in this Section, means all moneys held and owing by any life insurance corporation, unclaimed and unpaid for more than 15 years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the

preceding 15 years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

104. Funds held or owing by utility—Presumption of abandonment.] § 4. The following funds held or owing by any utility are presumed abandoned:

(a) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this State, less any lawful deduction, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than 7 years after the termination of the services for which the deposit or advance payment was made.

(b) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this State, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than 7 years after the date it became payable in accordance with the final determination or order providing for the refund.

105. Moneys held in trust for payment of stocks and bonds.] § 5. The provisions of this Act shall not apply to any amount held or owing by a banking organization as agent, or as trustee of an express trust, for the purpose of making payment to holders of, or in respect of stocks, bonds, or other securities of a governmental or other public issuer, or of a business association other than a business association which shall have discontinued the conduct of its business,

or the corporate existence of which shall have terminated, without the right to receive such amount having passed to a successor or successors.

106. Property distributable in course of voluntary dissolution—Presumption of abandonment.] § 6. All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this State, that is unclaimed by the owner within 2 years after the date for final distribution, is presumed abandoned.

107. Property held in fiduciary capacity—Presumption of abandonment.] § 7. All intangible personal property and any income or increment thereon, held in a fiduciary capacity (other than as trustee of an active express trust) for the benefit of another person is presumed abandoned unless the owner has, within 15 years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary.

(a) If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this State; or

(b) If it is held by a business association, doing business in this State, but not organized under the laws of or created in this State, and the records of the business association indicate that the last known address of the person entitled thereto is in this State; or

(c) If it is held in this State by any other person.

107a. Active express trusts.] § 7a. The provisions of this Act shall not apply to an active express trust.

108. Funds or property in hands of court or public officer.] § 8. All funds and intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this State, or political subdivision thereof, that has remained unclaimed by the owner for more than 7 years is presumed abandoned.

109. Property not otherwise covered by act—Presumption of abandonment.] § 9. All intangible personal property, not otherwise covered by this Act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this State in the ordinary course of the holder's business and has remained unclaimed by the owner for more than 15 years after it became payable or distributable is presumed abandoned.

110. Property of non-residents.] § 10. If specific property which is subject to the provisions of Sections 2, 5, 6, 7, and 9¹ is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this State and subject to this Act if:

(a) It may be claimed as abandoned or escheated under the laws of such other state; and

(b) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this State by a holder who is subject to the jurisdiction of this State.

111. Report of custodians.] § 11. (a) Every person holding funds or other property, tangible or intangible, pre-

¹ Sections 102, 105, 106, 107 and 109 of this chapter.

sumed abandoned under this Act shall report to the Director with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of \$25.00 or more presumed abandoned under this Act;

(2) In case of unclaimed funds of life insurance corporations the full name of the insured or annuitant and his last known address according to the life insurance corporation's records:

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under \$25.00 each may be reported in aggregate;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the Director prescribes by rule as necessary for the administration of this Act.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding, provided that the initial report required under this Act shall be filed not later than May 1, 1962 and shall include all items of property presumed

abandoned under the Act as of the preceding June 30 or December 31 as the case may be. The Director may postpone the reporting date upon written request by any person required to file a report.

(e) Before filing the annual report the holder of property presumed abandoned under this Act shall communicate with the owner at his last known address if any such address is known to the holder, setting forth the provisions hereof necessary to occur in order to prevent abandonment from being presumed.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

112. Notice to owners.] § 12. (a) Within 120 days from the filing of the report required by Section 11,¹ the Director shall cause notice to be published at least once each week for 2 successive weeks in an English language newspaper of general circulation in the county in this State in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this State, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this State.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property", and shall contain:

(1) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

¹ Section 111 of this chapter.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the Director.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within 65 days from the date of the second published notice, the abandoned property will be placed not later than 85 days after such publication date in the custody of the Director to whom all further claims must thereafter be directed.

(c) The Director is not required to publish in such notice any item of less than \$25.00 unless he deems such publication to be in the public interest.

(d) Within 120 days from the receipt of the report required by Section 11, the Director shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of \$25.00 or more presumed abandoned under this Act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the Director, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the Director to whom all further claims must be directed.

113. Delivery of property to director—Exception—Proof of claim.] § 13.

Every person who has filed a report as provided by Section 11¹ shall within 20 days after the time specified in Section 12² for claiming the property from the holder pay or deliver to the Director all abandoned property specified in the report after first deducting therefrom actual costs of mailing. Provided, however, that if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in Section 12, or if it appears that for some other reason the presumption of abandonment is erroneous; the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the Director, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

114. Delivery of property to director—Effect.] § 14.

Upon the payment or delivery of abandoned property to the Director, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the Director under this Act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property.

115. Income accruing after delivery to director.] § 15.

When property is paid or delivered to the Director under this Act, the owner is not entitled to receive income or other increments accruing thereafter.

116. Limitation period—Effect of expiration.] § 16. The expiration of any period of time specified by statute or court

¹ Section 111 of this chapter.

² Section 112 of this chapter.

order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this Act or to pay or deliver abandoned property to the Director.

117. Sale by director.] § 17. (a) All abandoned property other than money delivered to the Director under this Act shall within one year after the delivery be sold by him to the higher bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The Director may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under this Section shall be preceded by a single publication of notice thereof, at least 3 weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(c) The purchaser at any sale conducted by the Director pursuant to this Act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The Director shall execute all documents necessary to complete the transfer of title.

118. Funds from sale—Deposit.] § 18. (a) All funds received under this Act, including the proceeds from the sale of abandoned property under Section 17,¹ shall forthwith be transferred by the Director to the State Treasurer for deposit in the State Pensions Fund in the state treasury, ex-

¹ Section 117 of this chapter.

cept that the State Treasurer shall retain in a separate trust fund an amount not exceeding \$250,000 from which he shall make prompt payment of claims duly allowed by the Director as hereinafter provided. Before making the deposit the Director shall record the name and last known address of each person appearing from the holder's reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(b) Before making any deposit to the credit of the State Pensions Fund, the Director may deduct: (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) any costs in connection with the maintenance of records or disposition of claims made pursuant to this Act. The Director shall semi-annually file an itemized report of all such expenses with the Legislative Audit Commission.

119. Claims of interested persons—Filing.] § 19. Any person claiming an interest in any property delivered to the state under this Act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the Director.

120. Determination of claims.] § 20. (a) The Director shall consider any claim filed under this Act and shall hold a hearing and receive evidence concerning it. He shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him, his findings of fact in respect thereto, and the reasons for his decision. The decision shall be a public record.

(b) If the claim is allowed, the State Treasurer shall make payment forthwith, upon notification by the Director. The claim shall be paid without deduction for costs of notices or sale or for serving charges.

121. Review.] § 21. A final administrative decision of the Director in respect to a claim filed hereunder shall be subject to judicial review pursuant to the provisions of the "Administrative Review Act", approved May 8, 1945, as heretofore or hereafter amended,¹ and the rules adopted pursuant thereto. The term "administrative decision" is defined as in Section 1 of said "Administrative Review Act".² The review action may be instituted by any person adversely affected or aggrieved by the decision.

122. Director's refusal to receive property of small value.] § 22. The Director, after receiving reports of property deemed abandoned pursuant to this Act, may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum has accumulated. Unless the holder of the property is notified to the contrary within 120 days after filing the report required under Section 11,³ the Director shall be deemed to have elected to receive the custody of the property.

123. Examination of records.] § 23. The Director may at reasonable times and upon reasonable notice examine the records of any person if the Director has reason to believe that such person has failed to report property that should have been reported pursuant to this Act.

¹ Chapter 110, § 264 et seq.

² Chapter 110, § 264.

³ Section 111 of this chapter.

124. Enforcement of delivery.] § 24. If any person refuses to deliver property to the Director as required under this Act, the Director shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

125. Penalties.] § 25. (a) Any person who wilfully fails to render any report or perform other duties required under this Act, shall be punished by a fine of \$25 for each day such report is withheld, but not more than \$1,000.

(b) Any person who wilfully refuses to pay or deliver abandoned property to the Director as required under this Act shall be punished by a fine of not less than \$100 nor more than \$1,000 or imprisonment for not more than 6 months, or both.

126. Rules and regulations.] § 26. The Director is hereby authorized to make necessary rules and regulations to carry out the provisions of this Act.

127. Escheated or abandoned property under laws of other state.] § 27. This Act shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to the effective date of this Act, or to any funds held by any annuity, pension or benefit funds created pursuant to the laws of this State and supported by public revenues.

128. Severability clause.] § 28. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

129. Construction.] § 29. This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

130. Short title.] § 30. This Act may be cited as the Uniform Disposition of Unclaimed Property Act.

[§ 31. Repeal.]

[§ 32. Appropriation.]

PROOF OF SERVICE.

I, William G. Clark, Attorney General of Illinois, attorney for the State of Illinois, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 18th day of March, 1963, I served copies of the foregoing Motion of the State of Illinois for Leave to Intervene in this Case, Brief in Support of said Motion, and Intervening Petition of Illinois on each of the parties defendant by depositing copies in a United States post office or mail box, postage prepaid and addressed to:

Hon. John B. Connelly, Governor of Texas, Courts Bldg., Austin (1), Texas.

Hon. Waggoner Carr, Attorney General of Texas, Courts Bldg., Austin (11), Texas.

Richard W. Ervin, Attorney General of Florida, Capitol Bldg., Tallahassee, Florida.

Hon. David Stahl, Attorney General of Pennsylvania, State Capitol, Harrisburg, Penna.

Robt. B. Ely, III, 1600 Arch Street, Philadelphia 3, Penna. (Attorney for Applicant, Insurance Co. of North America.)

Arthur J. Sills, Attorney General of New Jersey, State Capitol, Trenton, New Jersey.

Joseph T. Wilson, Jr., Treasurer of Sun Oil Co., 1608.
Walnut St., Philadelphia 3, Penna.

Mr. Henry A. Frye, c/o Petter, Hamilton & Scheetz,
Fidelity-Philadelphia Trust Bldg., Philadelphia 9,
Penna.

Mr. T. F. Hill, Southland Center, P. O. Box 2880, Dal-
las 21, Texas.

Hon. Robert B. Meyner, Governor of New Jersey, State
Capitol, Trenton, New Jersey.

Honorable David L. Lawrence, Governor of Penna.,
- State Capitol, Harrisburg, Penna.

It is further certified that copies of said Motion, Brief in
Support and Intervening Petition of Illinois, have been
served on the following Governors and Attorneys General
of the following states, at their addresses, by mailing copies
by United States mail, prepaid:

State	Governor	Attorney General	Address
Pennsylvania	William Scranton		State Capitol, Harrisburg
Oregon	Mark O. Hatfield	Robert Y. Thornton	Dept. of Justice, Salem
Oklahoma	Henry Bellman	Charles Nesbitt	State Capitol, Oklahoma City
Utah	George D. Clyde	A. Pratt Kesler	State Capitol, Salt Lake City
Arizona	Paul Fannin	Robert Pickersell	State Capitol, Phoenix
Washington	Albert D. Rosellini	John J. O'Connell	Dept. of Justice, Olympia
Mass.	Endicott Peabody	Edward W. Brooke	State House, Boston
Arkansas	Orval E. Faubus	Bruce Bennett	Supreme Ct. Bldg., Little Rock
Conn.	John Dempsey	Albert L. Coles	State Capitol, Hartford
New York	Nelson A. Rockefeller	Louis J. Lefkowitz	State Capitol, Albany
Michigan	George Romney	Frank Kelley	State Capitol, Lansing
N. Carolina	Terry Sanford	T. Wade Bruton	Dept. of Justice, Raleigh
Louisiana	James H. Davis	Jack P. F. Gremillion	State Capitol, Baton Rouge
New Mexico	Jack M. Campbell	Earl E. Hartley	State Capitol, Santa Fe
California	Edmund G. Brown	Stanley Mosk	Library & Courts Bldg., Sacramento
Virginia	Albert S. Harrison, Jr.	Robert Y. Button	Supreme Court Bldg., Richmond 19
Kentucky	Bert T. Combs	John B. Breckinridge	State Capitol, Frankfort
Idaho	Robert E. Smylie	Allan G. Shepard	State Capitol, Boise

WILLIAM G. CLARK,

Attorney General, State of Illinois.

Subscribed and sworn to before me this 18th day of
March, 1963.

MARY GRIFFIN,

Notary Public.

FILE COPY

Office-Supreme Court, U.S.

FILED

JUN 3

1963

JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. 13 Original

STATE OF TEXAS,
Plaintiff,

vs.

STATE OF NEW JERSEY ET AL.,
Defendants,

AND

STATE OF FLORIDA,
Intervenor.

**REPORT OF SPECIAL MASTER ON APPLICATION OF
FLORIDA FOR PERMISSION TO INTERVENE**

WALTER A. HUXMAN,
Special Master.

**IN THE
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1962.

No. 13 Original

**STATE OF TEXAS,
*Plaintiff,***

vs.

**STATE OF NEW JERSEY ET AL.,
*Defendants,***

AND

**STATE OF FLORIDA,
*Intervenor.***

**REPORT OF SPECIAL MASTER ON APPLICATION OF
FLORIDA FOR PERMISSION TO INTERVENE**

By order of this Court dated February 25, 1963, the undersigned was appointed special master in the above entitled matter. By the same order there was submitted to the special master for his recommendations to the Court the application of Florida to be permitted to intervene. Concerning this application the special master respectfully submits the following findings of fact and conclusions of law and recommends them to the consideration of the Supreme Court.

FINDINGS OF FACT

I.

A hearing was held at Topeka, Kansas, April 18, 1963, at which all the parties to the action and the State of Florida were represented by counsel.

II.

The State of Texas has filed its Bill of Complaint in the Supreme Court seeking a declaratory judgment against the Sun Oil Company, a New Jersey corporation, the State of New Jersey and the State of Pennsylvania. In its complaint, it alleges that it alone has the right to escheat the sum of \$37,853.53 in miscellaneous sums of money owed by the Sun Oil Company to between 1,800 and 2,000 persons on:

(1) Uncashed checks in payment of obligations incurred in Texas, which checks were issued in Texas on bank accounts in Texas by the Gulf Coast Division office of said company at Beaumont, Jefferson County, Texas, and by the Southwest Division office of said company at Dallas, Dallas County, Texas, for wages, services, and supplies, and payable to various persons: (a) whose last known address is in Texas; (b) whose last known address is in states other than Texas; and (c) whose last known address is unknown.

(2) Uncashed lease rental checks issued in Texas on bank accounts in Texas by the Gulf Coast Division office of said company in Texas for various persons whose last known address is in Texas.

(3) Unclaimed payments to vendors and others, which obligations were incurred in Texas, and are held for

payment by the Gulf Coast Division office of the Southwest Division office of said company in Texas, to various persons: (a) whose last known address is in Texas; (b) whose last known address is in states other than Texas; and (c) whose address is unknown.

(4) Uncashed oil and gas purchase royalty checks issued in Texas on bank accounts in Texas by the Gulf Coast Division office of said company to various persons: (a) whose last known address is in Texas; (b) whose last known address is in states other than Texas; and (c) whose last known address is unknown.

(5) Mineral proceeds reflected by the records of the Gulf Coast Division office of said company in Texas and the Southwest Division office of such company in Texas on production from land and leases in Texas; and held for various persons: (a) whose last known address is in Texas; (b) whose last known address is in other states; and (c) whose last known address is unknown.

(6) Mineral proceeds reflected by the records of the Gulf Coast Division office of said company in Texas and the Southwest Division office of such company in Texas on production from lands and leases in other states for persons: (a) whose last known address is in Texas; (b) whose last known address is in other states; and (c) whose last known address is unknown.

(7) Unclaimed cash dividends on common stock of the Sun Oil Company, which dividends are credited on the books of the Sun Oil Company at Philadelphia, Pennsylvania, for persons whose last known address is in Texas.

(8) Unclaimed payments deducted for employees on war bonds, the records of which are now kept at the Philadelphia, Pennsylvania, office of such company, for various persons whose last known address is in Texas.

(9) Uncashed checks issued in Oklahoma, by the Mid-Continent Division office of said company at Tulsa, Oklahoma, to various persons whose last known address is in Texas.

(10) Unclaimed stock scrip certificates of the Sun Oil Company held for persons whose last known address is in Texas.

The debts evidenced, as described above, by (1) uncashed checks for wages, services, and supplies; (2) uncashed lease rental checks; (3) unclaimed payments to vendors and others; (4) unclaimed oil and gas royalty checks; and (5) mineral proceeds from lands and leases in Texas, all arose out of the operations of Sun Oil Company in Texas through its offices in Texas. All company records of these individual debts were originally made and entered in, and have since been kept in, the said division office in Texas exclusively.

The debts evidenced, as described above, by (6) mineral proceeds on lands and leases in other states; (7) unclaimed cash dividends on common stock; (8) unclaimed deductions for employees on war bonds; (10) unclaimed stock subscription certificates; and (9) uncashed checks issued to Oklahoma, are believed to have arisen in Texas.

III.

It alleges that the defendants, the State of New Jersey and the State of Pennsylvania also claim the right to escheat these funds but that it alone is entitled to maintain such an action. It asks for the declaratory judgment of the Supreme Court declaring such right to be solely in Texas and for an injunction enjoining New Jersey and Pennsylvania from instituting escheat actions.

IV.

Texas' action is predicated on a report filed with it by the Sun Oil Company listing the individual names, last known address of each claimant where such address is known, and where not known, listing the claimant as last address unknown, of all of the 1,800 to 2,000 individual claimants. Included in the report by the Sun Oil Company to Texas and in the action by Texas for a declaratory judgment entitling it to escheat all of these claims are nine items made payable to persons whose last known address was in a town in Florida. In its application for intervention, Florida claims the right to escheat these nine items made payable to persons whose last known address was in Florida. It thus appears that both Texas and Florida claim the right to escheat these nine items.

CONCLUSIONS OF LAW

I.

There is a conflict between Texas and Florida as to which state has the right to escheat the items made payable to residents of Florida.

II.

Florida is a necessary party to a complete adjudication of all matters in controversy.

III.

Florida's petition for intervention should be granted. All of which is respectfully submitted.

WALTER A. HUXMAN,
Special Master.

FILE COPY

Office-Supreme Court, U.S.
FILED

JUN 3 1963

JOHN F. DAVIS, CLERK

IN THE
**Supreme Court of
The United States**

October Term, 1962.

No. 13 Original.

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, ET AL.,

Defendants,

and

STATE OF FLORIDA,

Intervenor.

BRIEF OF THE STATE OF FLORIDA

RICHARD W. ERVIN as
Attorney General of
Florida

FRED M. BURNS, as Assistant
Attorney General of Florida

JACK A. HARNETT, as
Special Assistant Attorney
General of Florida

Attorneys for the State
of Florida.

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IN THE
**Supreme Court of
The United States**

October Term, 1962.

No. 13 Original.

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, ET AL.,

Defendants,

and

STATE OF FLORIDA,

Intervenor.

BRIEF OF THE STATE OF FLORIDA

STATEMENT OF THE CASE

The purpose of this litigation is to obtain a determination of the rights and interests of the respective states in and to lost, abandoned and unclaimed properties held in one state for the account of persons, firms and corporations resident in other states. Where the debtor and the creditor are, or are presumed to be, residents of the same state, then only one state is involved and no issue arises as to the rights of two or more states in and to the lost, abandoned or unclaimed property. In substance several states, having some claim, right, title or interest in and to the same lost, abandoned or unclaimed property, have come into this Court seeking, in what is, or is in the nature of, a proceeding for declaratory decree, a declaration of their respective rights, title and interest in and to the same lost, abandoned or unclaimed property, held or due by a debtor in one state to a creditor in another state or states. Limiting ourselves to the claim of the State of Florida to the items mentioned in Exhibit "A" to its Answer as Intervenor herein, such property is claimed by the State of Florida under its Chapter 717, Florida Statutes, because the obligations there mentioned are, or are presumed to be, properties due and owing to citizens and residents of Florida. Texas, New Jersey and Pennsylvania lay claim to such properties because of their connection with the debtor or debtors in such states. We are here concerned with the situs of lost, abandoned and unclaimed intangible personal property for purposes of escheat or custody under statutes like or similar to Chapter 717, Florida Statutes.

Although the debts and obligations claimed by the State of Florida, as evidenced by Exhibit "A" to her proposed Answer in Intervention, are small in amount and represent but a

small total amount, such claims are representative of thousands of other unclaimed debts and obligations due by debtors of other states to citizens and residents of Florida, which amounts to a substantial sum, not capable of being estimated at the present time. Not only is Florida interested in the unclaimed debts and obligations due and owing from debtors in other states to creditors resident of or domiciled in Florida, but every other state in the Union is or will be in the future interested in such unclaimed debts or obligations. This same statement is applicable to abandoned debts and obligations due from debtors in one state to creditors in other states, whether or not such states are or may subsequently become parties to this litigation. Florida's interest in the debts and obligations, now abandoned or unclaimed by the creditors resident of Florida, described in her Exhibit "A" attached to her proposed Answer in Intervention, as well as the interests of other states under like circumstances, are not adequately represented in this litigation.

Representation of Florida's interests in the present litigation:

—It appears from the record in this case that the plaintiff, the State of Texas, lays claim to the unclaimed and abandoned obligations due from the defendant Sun Oil Company, as debtor, to its numerous creditors, arising from business done within the said State of Texas, including all of such creditors whether residents of the State of Texas or elsewhere; the said plaintiff, evidently as a secondary claim, lays claim to such debts and obligations as may be due to citizens and residents of the State of Texas. New Jersey, one of the defendants, lays claim to the said debts and obligations on the basis that the defendant Sun Oil Company is a corporation organized and incorporated under and pursuant to the statutes and laws of New Jersey, and maintains an office in the said state for certain purposes

as required by the statutes and laws of said state. The State of Pennsylvania appears to lay claim to the same debts and obligations on the basis of the said corporation having and maintaining a principal place of business in said state; this is probably the place or office from which general control and direction over the business of the corporation is maintained. None of the defendant states, or the plaintiff state, lays claim to the debts and obligations due and owing by the defendant Sun Oil Company to its creditors solely on the ground of the residence or domicile of the creditors. The litigation at the present time does not involve a case or situation where a state makes claim to the said debts and obligations due to its citizens and residents unconnected with other claims to the same property.

The State of Florida, as intervenor in this litigation, enters this case in subordination to, and in recognition of, the propriety of the main proceedings, and will confine its Brief to the rights of the respective states where a corporation incorporated in one state maintains business offices in two or more other states and transacts business in many of the other states with persons, firms and corporations resident in such other states. It appears, from the Complaint of the State of Texas herein, that the Sun Oil Company, one of the defendants herein, exists as a corporation under the statutes and laws of the State of New Jersey, and maintains business offices in several of the other states, including Pennsylvania and Texas. In connection with the operation of its business the said Sun Oil Company, through its principal office in New Jersey, and its business offices in Pennsylvania and Texas, and maybe in other states, has incurred obligations, "for wages, services, rental and royalty payments, cash dividends, deductions from wages for employees," and other types and kinds of obligations where

the obligee, payee or person entitled thereto is a citizen or resident of a third state, including the State of Florida, which obligations are now abandoned or unclaimed by the creditors, who are residents of the State of Florida.

Unclaimed obligations.—It appears from a footnote appended to *Western Union Telegraph Company v. Pennsylvania*, 368 U. S. 71, 82 S. Ct. 199, 7 L. ed. 2d 139, that the States of Arizona, Arkansas, California, Connecticut, Florida, Idaho, Kentucky, Louisiana, Massachusetts, Michigan, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Utah, Virginia and Washington each have some type of statute or law making provision for the escheat of, or the taking into custody of, lost, abandoned and unclaimed intangible personal properties, such as wages due, money due for services, rental and royalty checks or obligations, corporate dividends, and other types of obligations. Here, in order to illustrate the question before the Court, we will presume that the defendant Sun Oil Company, from its home office in New Jersey, and its business offices in Texas and Pennsylvania, and elsewhere, has become obligated to other persons; firms and corporations, in one or more of the nineteen states hereinabove mentioned. In this connection checks in payment of obligations from the said Sun Oil Company to the payees and obligees therein named doubtless have been mailed to payees and obligees resident in most if not all of the above mentioned states, as have been dividend checks, checks in payment of obligations on oil and other leases, royalty checks and documents in payment of obligations, many of which have not been cashed, or are unclaimed. In some instances the Company and its creditors are residents of the same state, but in most instances they are residents of different states. The Sun Oil Company is the obligor while other persons, firms and corporations are the obligees.

Same property claimed by two or more states.—Under the facts above presumed, in many instances two or more states have contact with such unclaimed checks and other obligations or their payees or obligees, including the state of incorporation of the Sun Oil Company, or a state wherein it has a business office, (at least in those instances where checks were issued through a business office), and the states of residence of the obligee or creditor of the defendant Sun Oil Company, as causes them to lay claim to the same intangible.

Under Chapter 717, Florida Statutes, (see Exhibit "1" hereto attached) intangible and other property, *held or owed* in Florida, in the ordinary course of business, for fifteen years or more, are deemed abandoned and are subject to state custody under said Chapter 717, Florida Statutes. Under the examples above mentioned abandoned properties held or owed by the Sun Oil Company are deemed abandoned under the laws of Florida after having been held or owed in the usual course of business to a citizen or resident of Florida for a period of fifteen years. It may have been held or owed by the company at its home office in New Jersey, at a business office in Texas or elsewhere, for the account of an employee, stockholder, or other person, residing in some other state, for instance Florida. Under these circumstances New Jersey may feel free to lay claim to the abandoned property because that state is the domicile of the Sun Oil Company; Texas may lay claim to the same abandoned property because the obligation accrued in a Texas business office; and Florida may lay claim thereto because the obligation is owed to a resident of Florida.

Cases will arise where two or more states will proceed against the same obligation or debt; one because the debt is due from a debtor of such state to a creditor in another state, and the other because the debt is due from a debtor of another

state to one of its residents, especially where process may be served upon such debtor.

The dilemma of debtors of one state, who are indebted or obligated to pay money to creditors of other states, where both such states have applicable escheat or custody statutes providing for the escheat or possession of abandoned or unclaimed intangible personal property, was referred to and discussed by Mr. Justice Schettino of a Superior Court of New Jersey in New Jersey v. American-Hawaiian Steamship Company, 29 N. J. Sup. 116, 101 A. 2d 598, text 608, when he stated that "The United States Supreme Court has not yet formulated a test for determining the respective rights of several states where each has contact with the intangible and each is in position to effect seizure by personal service of process upon the debtor within its jurisdiction."

*Under the presumptions above indulged in, the Sun Oil Company of New Jersey, might find escheat or custody proceedings being brought against it by New Jersey (domicile of the company), Texas (business office of the company), and Florida (residence of the person entitled to the abandoned property), each claiming the escheat or permanent custody of the same fund; each such state supporting its claim by respectable authority. We now come to the question of the *situs* of an obligation owed by a resident of one state to a resident of another state; the funds from which the claim may be enforced would appear to be represented by a resident of one state, while the obligation itself is represented by a resident of another state, each of which states may demand the possession or the escheat of the said debt or obligation.*

The difficulties met in escheat or custody proceedings resulting from the residence of the creditor being in one state

and that of the debtor being in another state were recognized by this Court when it said, in *Western Union Telegraph Company v. Pennsylvania*, 368 U. S. 71, 82 S. Ct. 199, 7 L. ed. 2d 139, text 142, that prior "opinions have recognized that when a state court's jurisdiction purports to be based . . . on the presence of property within the state, the holder of such property is deprived of due process of law if he is compelled to relinquish it without assurance that he will not be held liable again in another jurisdiction or in a suit brought by a claimant who is not bound by the first judgment." Borrowing from the Court's opinion in the *Western Union* case above mentioned, do the courts of Texas, New Jersey, Pennsylvania, Florida, or of any other state, have power to protect the Sun Oil Company, one of the defendants herein, from (1) the claims of the persons to whom the obligations are due, and (2) from the claims of other states having some connection with the claims, such as the residence of the person by whom owed or to whom owed, and to other states wherein the Sun Oil Company was incorporated or now maintains business situses from which the obligation was issued. This seems to pose the question of what state has jurisdiction over the subject matter of the claims in question; in what state or states lies the situs of the property in question; is it the state of the residence of the creditor or of the residence of the debtor.

Property claimed by Florida, in connection with this litigation, includes the following items, due and owing to persons, firms and corporations, resident of the State of Florida, by the Sun Oil Company aforesaid, to-wit:

Item No.	Page	Name and Address	Amount	Date
201	8	C. B. Allen & Wife, Roxie Bushriell, Florida	\$10.00	No date
236	9	G. C. Cannon Branford, Florida	14.66	8/20/47

Item No.	Page	Name and Address	Amount	Date
265	10	H. E. Dickens Benton Springs, Florida	.04	1/27/41
290	11	E. N. Goodbread, et ux Lake City, Florida	23.00	7/ 4/47
291	11	J. N. Grainger, et ux Felda, Florida	4.00	12/14/42
312	12	E. S. Hull and Sallie Felda, Florida	1.00	3/27/40
380	14	Clemmie Robinson Sneads, Florida	25.00	No date
389	15	Lottie V. Scott	17.00	1/31/46
390	15	937 N. W. 23rd Avenue Miami, Florida	17.00	1/ 7/46

NOTE: It seems evident from the letter from the Sun Oil Company, by Tom E. Bryan, to the Attorney General of Florida, that the above references to "Item No." and "Page" refer to the item number and page number of the list furnished the State of Texas. (Exhibit "A" to intervenor's Answer).

SPECIFICATION OF POINTS INVOLVED

Where a corporation, incorporated under the laws of one state, wherein it maintains its principal office, establishes and maintains regional places of business in one or more other states, through which it becomes obligated to persons, firms and corporations resident in third states, for wages, services furnished, rental and royalty payments, dividends, and otherwise, which obligations, by reason of the passage of time are brought within the purview of escheat and custodial statutes and laws of the said states, two or more of which claim possession of the property in question by reason of their said statutes and laws, *which of said states may maintain escheat or custody proceed-*

ings for such obligations or funds and obtain possession thereof?

SUMMARY OF THE ARGUMENT

This litigation involves the rights of the respective states, under their escheat or custodial statutes, where the debtor is domiciled in one state and the creditor in another. In this litigation the debtor, the defendant Sun Oil Company, being a New Jersey corporation, with places of business in Pennsylvania, Texas, and elsewhere, has become indebted to creditors residing not only in New Jersey, Pennsylvania and Texas, but in other states, including the State of Florida, which indebtednesses, because of the failure of the creditor to claim or collect the same within the statutory period are now deemed to be unclaimed or abandoned under the laws of those states having the Uniform 'Disposition of Unclaimed Property Act and similar statutes or laws, or to be within the escheat statutes and laws of other of the interested states. There is a clear distinction between the custodial type of statute or law, such as the Uniform Disposition of Unclaimed Property Act, which appears to have been adopted in Arizona, California, Florida, Idaho, Illinois, New Mexico, Oregon, Utah, Virginia and Washington, and the escheat type of statute or law under which the state takes not only the custody of the unclaimed or abandoned property, but also undertakes to obtain full and complete title to such property, divesting the creditor of his title thereto, because of the passage of time, as well as taking possession of the funds held for the payment of the said obligation. Escheat proceedings have usually been held by the courts to be either proceedings strictly *in rem* or proceedings *quasi in rem*. (*Hamilton v. Brown*, 161 U. S. 256, 16 S. Ct. 585, 40 L. ed. 691; *Security Savings Bank v. California*, 263 U. S. 282, 44 S. Ct. 108, 68 L. ed. 301).

Usually in such proceedings personal service cannot be obtained over the creditor, so that, in order to obtain escheat jurisdiction a state court must proceed against the debt or obligation itself (the "res"), as an *in rem* or a *quasi in rem* proceeding; before this may be done the debt or obligation (the "res") must have its *situs* within the territorial limits of the state (*Standard Oil Company v. New Jersey*, 341 U. S. 428, 71 S. Ct. 822, 95 L. ed. 1078). This leads to the inquiry of what is the "res" in such a proceeding, and how may a state court obtain jurisdiction over the said res, that is, *the debt or obligation*, for the purposes of escheating the same to the state, or for custodial proceedings under the Uniform Disposition of Unclaimed Property Acts and similar laws? The obligation of the debtor to pay the debt or indebtedness, and the right of the creditor to receive payment from the debtor are not the same thing.

Under the *escheat* proceedings, in which the rights and interests of the creditor are divested and vested in the state, the rights and interests of the creditor are material so that jurisdiction over either the debtor or his debt or obligation, as the "res," must be obtained in order to vest the Court with jurisdiction to escheat such debt or obligation, divesting the creditor thereof and vesting the same in the state. In custodial proceedings only the "res" of the fund for payment, and not the "res" of the debt or obligation, as the property of the creditor is involved; escheat proceedings must of necessity involve not only the "res" of the fund for payment, but also the "res" of the debt or obligation. In the first case only the debtor is divested of his property; in the second case not only is the debtor divested of the property to pay the debt or obligation, but the creditor is also divested of his debt or obligation due him by the debtor. Where the debtor resides in one state and

the creditor in another, one of the said "res" is in one state, and the other "res" in another state.

In this case, for either of the states, that is, the States of New Jersey, Pennsylvania or Texas, in which the defendant Sun Oil Company maintains places of business, to escheat to itself the debts or obligations due and payable to creditors domiciled or residing in Florida, California, or other state, without personal service on such creditors, they must obtain jurisdiction over the "res" forming the subject matter of the litigation. When personal jurisdiction over the creditor cannot be obtained, then, in order to maintain a proceeding to escheat such debts or obligations of the creditor, jurisdiction over such debts and obligations, as a "res," must be obtained. Such debts and obligations are themselves intangible personal property (*Buck v. Beach*, 206 U. S. 392, 27 S. Ct. 712, 51 L. ed. 1106, text 1111). "Intangible movables, such as debts and other choses in action ordinarily follow the person . . . and have their situs at the domicile of the owner." (15 C. J. S. 928, Section 18). The following types and classes of intangible personal property have been held to have their *situs* at the place of domicile or residence of the creditor, not that of the debtor: credits and accounts (*Virginia v. Imperial Coal Sales Company*, 293 U. S. 15, 55 S. Ct. 12, 79 L. ed. 171, text 175); income derived from contracting (*Lawrence v. State Tax Commission*, 286 U. S. 276, 52 S. Ct. 556, 76 L. ed. 1102, text 1105); open accounts (*Francis Beidler, II v. South Carolina*, 282 U. S. 1, 51 S. Ct. 54, 75 L. ed. 131, text 133); bank deposits (*Baldwin v. Missouri*, 281 U. S. 586, 50 S. Ct. 436, 74 L. ed. 1056); corporate stock (*Hawley v. Malden*, 232 U. S. 1, 34 S. Ct. 201, 58 L. ed. 477, text 482 and 483; *Covington v. First National Bank*, 198 U. S. 100, 25 S. Ct. 562, 49 L. ed. 963, text 969); debts (*Buck v. Beach*, 206 U. S. 392, 27 S. Ct. 712, 51 L. ed. 1106, text 1111; *Chicago, Rock Island and Pacific Railway*

Company v. Sturm, 174 U. S. 710, 19 S. Ct. 797, 43 L. ed. 1144, text 1145; *Kirtland v. Hotchkiss*, 100 U. S. 491, 25 L. ed. 558; *Cleveland, Painesville and Ashtabula Railroad Company v. Pennsylvania*, 82 U. S. 300, 21 L. ed. 179, text 187); bonds (*Kirtland v. Hotchkiss*, 100 U. S. 491, 25 L. ed. 558). See also quotations from 84 C. J. S. and 51 Am. Jur. appearing herein on pages 25 to 29 hereof.

Although this Court may, to a limited extent, issue process to and adjudicate controversies between two or more states, including individuals and corporations in connection therewith, state courts may not issue process to or implead another state or states without the consent of such state or states legally given, or by legal appearance properly made. The courts of one state cannot issue process to and implead another state, except to the extent permitted by the other state. "A state by reason of its sovereignty, is immune from suit and cannot be sued without its consent in its own courts, nor can it, under the principle of sovereign immunity, be sued without its consent in the courts of a sister state or elsewhere." (81 C. J. S. 1300-1302, Section 214).

In this case the debtor, the Sun Oil Company, a New Jersey corporation, having offices in Texas and Pennsylvania, became indebted to those persons set out in Florida's Exhibit "A" to its Answer in Intervention, residents of Florida, domiciled in said state, more than fifteen years ago, so as to be within the purview of Chapter 717, Florida Statutes, and deemed to be abandoned or unclaimed thereunder, so as to entitle Florida to the possession thereof under said Chapter 717. However, the States of Texas and New Jersey, and maybe Pennsylvania, claim the right to the possession of said debts or obligations and/or the right to escheat the title thereto unto said states. The situs of the debt or obligation due by the Sun Oil

Company to the citizens and residents of the State of Florida, as well as of other states, is at the residence or domicile of the said creditors in Florida, or other state as the case may be. The *situs* of the "res," that is the said debts and obligations, is in the State of Florida and not in the States of New Jersey, Pennsylvania or Texas. This "res" is not within the jurisdiction of New Jersey, Pennsylvania or Texas, or any other state other than Florida. This "res" is subject to seizure in *in rem* or *quasi in rem* proceedings by those courts having jurisdiction over the place of the residence or domicile of the said creditors. The property right in the said debts and obligations has its "res" at the place of residence or domicile of the creditor. Although the courts of the residence or domicile of the debtor may have some jurisdiction of the funds *charged with the payment* of said debts and obligations, for the purpose of preserving and protecting the same, in the state of the residence or domicile of the debtor, but not over the "res" of the debt or obligation, which is at the residence or domicile of the creditor.

In races of diligence between the state of the residence of the debtor and the state of the residence of the creditor, the "res" of the debt or obligation being at the residence of the creditor and not the residence of the debtor, we do not think that the state of the residence of the debtor has such jurisdiction as will support an escheat proceeding. Only the state of the residence of the creditor, absent personal service on him, would have any right to proceed to escheat such debt or obligation to itself and take full title thereto.

So far as we have been able to ascertain, *Western Union Telegraph Company v. Pennsylvania*, 368 U. S. 71, 82 S. Ct. 199, 7 L. ed. 2d 139, was the first case to come before this Court when two or more states were contending for the escheat of the same intangible personal property, in the form

of debts and obligations, each state having some connection with the debt or obligation. It appears that a full re-examination of such escheats would be in line at this time so that debtors will not find themselves paying the same debt or obligation, under escheat proceedings, to two or more states. The debt or obligation of the creditor, as the "res" of the transaction, appears to be the material element for determination in escheat proceedings, based on unclaimed or abandoned debts and obligations, as well as other intangibles. The right to escheat a debt or obligation, on the grounds that it has been abandoned or is unclaimed by the creditor for a period of time, follows the residence or domicile of the creditor as the "res" of such debt or obligation. The right to escheat such property depends on the Court's jurisdiction over the said "res."

The state of the domicile of the creditor, to which unclaimed or abandoned properties, funds or obligations are due and owing, the said state being the situs of the "res" of such properties, has prior claim to such unclaimed or abandoned properties; should any other state take or otherwise obtain the possession of such properties, its right and claim thereto, not being the "res" of such properties, would be subordinate to the claim of the state of residence or domicile of the said creditor.

ARGUMENT

The Florida Legislature at its 1961 regular session adopted, in substantial identical form the Uniform Disposition of Unclaimed Property Act recommended by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1955, which Act (Chapter 61-10, Acts of 1961) was approved by the Governor of Florida on May 11, 1961, and became effective on September 30, 1961, now appearing as Sections 717.01 to 717.30, Florida Statutes, 1961. (See Exhibit "1" hereto). This "Uniform Act is custodial in nature,"—that is to say, it does not result in the loss of the owner's property rights. The state takes custody and remains the custodian in perpetuity. Although the actual possibility of the owner presenting a claim in the distant future is not great, under this statute he retains his right of presenting his claim to the state at any time no matter how remote. State records will have to be kept on a permanent basis. "In this respect the measure differs from the escheat type of statute, pursuant to which the right of the owner is foreclosed and the title to the property passes to the state." (Commissioner's Prefactory Note to the Uniform Act). The statement was made in the Prefactory Note that the said Uniform Act "if adopted by the states, will serve to protect the interests of owners, to relieve the holders from annoyance, expense and liability, to preclude multiple liability, and give the adopting state the use of considerable sums of money that otherwise would, in effect, become a windfall to the holders thereof."

The Florida statute appears similar in nature and operation to the California statute considered by this Court in *Security Savings Bank v. California*, 263 U. S. 282, 44 S. Ct. 108, 68 L. ed. 301, 31 A. L. R. 391; in which this Court remarked that "the state does not seek to enforce any claim against him

(the depositor). It seeks to have the deposit transferred" to the State of California. In this type of proceeding the custody of the unclaimed or abandoned property is transferred from the custodian of the fund to the state, which will continue to hold the property in its custody, for the account of the person or persons entitled thereto. The following states appear to have adopted in substance, if not verbatim, the Uniform Act, to-wit: Arizona, California, Florida, Idaho, Illinois, New Mexico, Oregon, Utah, Virginia and Washington.

Situs of obligations to pay money and corporate stock, etc.—

⁸³The Pennsylvania statute involved in *Western Union Telegraph Company v. Commonwealth of Pennsylvania*, 368 U. S. 71, 82 S. Ct. 199, 7 L. ed. 2d 139, provided that "any real or personal property within or subject to the control of" the Commonwealth of Pennsylvania "shall escheat to the Commonwealth" whenever it "shall be without a rightful or lawful owner, remain unclaimed for the period of seven successive years, or the whereabouts of such owner . . . shall be and remain unknown for the period of seven successive years." This statute was construed by the Pennsylvania court as an escheat statute under which the Commonwealth took not only the possession of abandoned and unclaimed property and funds but was also vested with the title to such properties to the exclusion of the person entitled thereto who may have failed to claim the same within the said seven years. This statute differs materially from the Florida statute and the Uniform Act from which derived. The Pennsylvania Supreme Court, in *Commonwealth of Pennsylvania v. Western Union Telegraph Company*, 400 Pa. 337, 162 A. 2d 617, upheld the Pennsylvania act as providing for the escheat of the title to unclaimed or abandoned property held by persons in Pennsylvania for the accounts of nonresidents of the state. That is, the Pennsylvania

statute was held to be an escheat and not a custodial statute as is the Florida statute and the Uniform Act.

In the case of the Florida statute, as well as those states which have adopted the Uniform Disposition of Unclaimed Property Act, the same being custodial acts and statutes, although the custody of the property is divested from the custodian thereof, such property is vested in the state, not as the owner of the entire title thereto, but as custodian or trustee for the person entitled thereto, that is its owner. In the case of those states having the escheat type statutes, not only is the custody of the property moved from the custodian to the state, but the title to the property, or the right thereto, is transferred to the state and the person entitled thereto, because of the escheat, is divested of his title to the fund, which escheat is under the terms of the statute binding on the heirs, personal representative and assigns of the said owner. Proceedings designed to escheat the property of nonresident creditors are questionable and do not divest the title of the creditor where there is no jurisdiction over the debt or obligation due him, or of him personally. Here the situs of the debt, not of the fund for its payment, is material and jurisdictional. Under the Uniform Act, including the Florida statute, the person entitled to the fund does not appear to be a necessary party to the custodial procedure, while under the escheat statutes he is a necessary party, and unless and until jurisdiction is obtained by the court over him or his property no final judgment in escheat may be made and entered.

The author of the Annotation in 95 L. ed. 1092-1096, on page 1094, states that, "an escheat proceeding is a proceeding in rem. *Hamilton v. Brown* (1896), 161 U. S. 256, 40 L. ed. 691, 16 S. Ct. 585; *Security Savings Bank v. California*, (1923), 263 U. S. 282, 68 L. ed. 301, 44 S. Ct. 108, 31 A. L. R. 391 . . .

In order to give escheat jurisdiction to the state courts the res must have its 'situs' within the territorial limits of the state. *Standard Oil Co. v. New Jersey* (1951) 341 U. S. 428, 95 L. ed. 1078, 71 S. Ct. 822. . . . This seems to raise the question of what is the "res" in such a custodial or escheat proceeding, and how is a court's jurisdiction to be obtained of the said "res."

This Court, in *Connecticut Mutual Life Insurance Company v. Moore*, 333 U. S. 541, 68 S. Ct. 682, 92 L. ed. 863, had before it a New York statute providing for the escheat to the state of the proceeds of life insurance policies issued for delivery in New York on the lives of residents of the state. The claim or right of the policy holder to the proceeds of the insurance appears to have been deemed the "res" and being held to be in New York was held to justify a proceeding for the possession thereof by New York, although the insurer was a Massachusetts corporation.

In *Standard Oil Company v. New Jersey*, 341 U. S. 428, 71 S. Ct. 822, 95 L. ed. 1078, New Jersey proceeded against the Standard Oil Company, a New Jersey corporation, for the custody and escheat of "twelve shares of the common stock of the Company" issued to and held by persons residing beyond the boundaries of the State of New Jersey. Standard Oil Company had "no tangible property in New Jersey except its stock and transfer book, kept in its registered office, located in the office of an individual, at Flemmington, New Jersey." (341 U. S. 437). The fact that the Standard Oil Company was a New Jersey corporation was held by this Court to give "New Jersey power to seize the res here involved, to-wit, the 'debts or demands due to the escheated estate.'" This case may well have proceeded on the basis of the fund for payment and its situs instead of the situs of the creditor.

The first of the above two cases held that the obligation due by the debtor to the creditor was a "res" in the state of the residence of the creditor; while the second held that the obligation due the creditor by the debtor was a "res" in the state of the residence of the debtor. This seems to present a conflict between the two cases, unless there are two types of "res" involved in the two cases. Unless the right to receive payment of the debt or obligation be one type of "res" and the obligation to make the payment be another type of "res," there is but one "res." This issue seems to pose the question of the "situs" of obligations to pay money, deposits in banking institutions, open accounts, payment of stock dividends, as well as corporate stock, to mention a few. Numerous authorities hereinafter set out or referred to have fixed the "situs" of obligations to pay money to be at the domicile or residence of the creditor; bank deposits to have their "situs" at the domicile or residence of the depositor; and corporate stock to have its "situs" at the domicile or residence of the stockholder.

The situs of a thing has been said to be the place where it is in contemplation of law. "Intangible movables, such as debts and other choses in action ordinarily follow the person—mobilia sequuntur personam—and have their situs at the domicile of the owner. For many purposes the localization of intangible movables at the domicile of the owner is a convenient and useful rule. It is a rule designed to work out practical justice, so that the courts do not hesitate to depart from the rule and adopt a different situs where its application would produce injustices and inequities." (15 C. J. S. 928, Section 18). For the purposes of an *attachment* a debt has been regarded as having its presence either at the domicile of the debtor or at the domicile of the creditor. (7 C. J. S. 263, Section 92). This rule appears to have been followed also in proceedings in *garnishment*. (38 C. J. S. 337 and 339, Section

124). Proceedings in attachment and in garnishment are proceedings brought against a payor or obligor to substitute the person bringing the attachment or garnishment for and in lieu of the payee or obligee and do not necessarily fix the situs of the obligation for other purposes.

In *Virginia v. Imperial Coal Sales Company*, 293 U. S. 15, 55 S. Ct. 12, 79 L. ed. 171, text 175, the company was a Virginia corporation, but maintained a business office in Ohio. When the Virginia authorities imposed taxes on the said company for credits and accounts in the Ohio office, the company brought an injunction suit in Virginia, in which it prevailed on the theory that the tax was violative of the Federal Constitution. The State of Virginia appealed to this Court which reversed the Virginia Court, its views being that "such credits and accounts are regarded as situated at the domicile of the creditor and that domicile establishes a basis for taxation."

In *Lawrence v. State Tax Commission*, 286 U. S. 276, 52 S. Ct. 556, 76 L. ed. 1102, text 1105, a resident of Mississippi was engaged in highway construction work for the State of Tennessee, or some agency or subdivision thereof, from which the said resident of Mississippi obtained compensation, resulting in income. Mississippi imposed a tax on the net income derived by the said contractor as aforesaid, against which an injunction was sought in the state courts, but denied. The state decision and judgment was affirmed by this Court, which stated that "domicile in itself establishes a basis for taxation. Enjoyment of the privileges of residence within a state, and the attendant right to invoke the protection of its laws are inseparable from the responsibility for sharing the costs of government."

In *Francis Beidler, II v. South Carolina Tax Commission*,

282, U. S. 1, 51 S. Ct. 54, 75 L. ed. 131; text 133, one Francis Beidler, a resident and citizen of Illinois, was at the time of his death the owner of about 8,000 shares of the capital stock in a South Carolina corporation, which corporation, at the time of Beidler's death, was indebted to him in the sum of \$556,864.22 as an open account and owed him \$64,672.00 in unpaid declared dividends on the stock owned and held by him. South Carolina imposed an inheritance tax upon the said property owned by Beidler, a resident of Illinois, at the time of his death. These same items were included in the inheritance tax imposed by Illinois. This tax was upheld by the Supreme Court of South Carolina. This Court reversed, in so far as the indebtedness of the South Carolina corporation to the said decedent was involved, stating that "the mere fact that the debtor (the corporation) is domiciled within the state (South Carolina) does not give it jurisdiction to impose an inheritance or succession tax upon the transfer of the debt of a decedent who is domiciled in another state."

In *Baldwin v. Missouri*, 281 U. S. 586, 50 S. Ct. 436, 74 L. ed. 1056, one Carrie Pool Baldwin died a resident of Illinois, with bank deposits in banks in Missouri, and other intangibles located in the same state. Missouri imposed an estate or inheritance tax on the said bank deposits and other intangibles, which imposition was upheld by the Supreme Court of Missouri. Review was sought by this Court. The judgment of the Missouri Court was reversed. This Court, in the course of its opinion, stated that "ordinarily, bank deposits are mere credits and for purposes of ad valorem taxation have situs at the domicile of the creditor only. The same general rule applied to negotiable bonds and notes whether secured by liens on real estate or otherwise."

In *Blodgett v. Silberman*, 277 U. S. 1, 48 S. Ct. 410, 72 L. ed.

749, text 757, this Court, after referring to the common law maxim of "*mobilia sequuntur personam*" remarked that "there has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the state of the domicil or elsewhere, and is so fully sustained by cases in this and other courts, that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not."

In *Hawley v. Malden*, 232 U. S. 1, 34 S. Ct. 201, 58 L. ed. 477, text 482 and 483, this Court, dealing with the tax situs of shares of corporate stock, remarked that "they are still in the nature of contract rights or *choses in action*. . . . As such, in the absence of legislation prescribing a different rule, they are appropriately related to the person of the owner, and, being held by him at his domicil, constitute property with respect to which he is under obligation to contribute to the support of the government whose protection he enjoys."

In *Buck v. Beach*, 206 U. S. 392, 27 S. Ct. 712, 51 L. ed. 1106, text 1111, this Court said that "generally speaking, intangible property in the nature of a debt may be regarded, for the purposes of taxation, as situated at the domicil of the creditor and within the jurisdiction of the state where he has such domicil. It is property within that state."

In *Covington v. First National Bank*, 198 U. S. 100, 25 S. Ct. 562, 49 L. ed. 963, text 969, this Court remarked that the "situs of shares of foreign-held stock in an incorporated company, in the absence of legislation imposing a duty upon the

company to return the stock within the state as the agent of the owner, is at the domicile of the owner. . . . It is true that the state may require its own corporations to return the foreign-held shares for the owner for the purposes of taxation."

In *Chicago, Rock Island and Pacific Railway Company v. Sturm*, 174 U. S. 710, 19 S. Ct. 797, 43 L. ed. 1144, text 1145, this Court remarked that "the primary proposition is that the situs of a debt is at the domicile of a creditor, or, to state it negatively, it is not at the domicile of the debtor."

In *Kirtland v. Hotchkiss*, 100 U. S. 491, 25 L. ed. 558, the State of Connecticut had imposed taxes on certain bonds and indebtednesses made and delivered by a resident of Illinois to a resident of Connecticut, secured by a lien on real property in Illinois, which its resident resisted on the ground that such bonds and indebtednesses were not subject to taxation in Connecticut. This Court, rejecting this contention, said that "the debt in question although a species of intangible property, may, for purposes of taxation, if not for all purposes, be regarded as situated at the domicile of the creditor."

In *Cleveland, Painesville and Ashtabula Railroad Company v. Pennsylvania*, 82 U. S. 300, 21 L. ed. 179, text 187, this Court remarked that "debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property of the debtors, is simply to misuse terms."

In *Wilkins v. Ellett, Administrator*, 76 U. S. 740, 19 L. ed. 586, this Court stated that "the personal estate of the deceased is to be regarded, for the purposes of succession and distri-

bution, wherever situated, as having no other locality than that of his domicil, . . ."

Tax situs of intangibles, generally.—The general rule as to the situs of intangible personal property for purposes of taxation appears to be reflected in the following extracts from 84 C. J. S. to-wit:

84 C. J. S. 232 and 233, Section 116.—"The general rule fixing the situs of intangibles at the domicile of the owner has been recognized or applied in the case of accounts receivable, the owner's interest in a promissory note, and bank deposits. Accordingly, it has been held or recognized that, when owned by a resident of, or one domiciled in, a particular state, such intangibles have a situs and are taxable in that state notwithstanding the debt or obligation involved is due from a non-resident, or the documentary evidence thereof is kept outside the state. Conversely, such property, when owned by a non-resident, in the absence of a showing to the contrary, does not have a situs and is not taxable in a particular state notwithstanding the debt or obligation involved is due from a resident or the documentary evidence thereof is kept within the state."

84 C. J. S. 255, Section 130.—*Accounts receivable.* "Like other intangibles, except in so far as they may be used in business in another state and acquire a business situs therein, under statutes so providing, the accounts receivable of a corporation have a situs in the state of the corporation, and hence are taxable to the corporation within the state, regardless of their source or place of use, and even though they are taxable in other states."

84 C. J. S. 257 and 258, Section 130.—*Bonds.* "Corporate bonds usually have their situs at the domicile of the owner and

only at such domicile. Thus, the bonds of a foreign corporation owned by a person or corporation domiciled in a particular state are usually taxable in such state, notwithstanding the bonds are kept or deposited outside the state. Conversely, bonds of a domestic corporation are not taxable when owned by a nonresident, notwithstanding they are kept or deposited within the state, in the absence of any effective reservation by the state of power in that regard."

84 C. J. S. 656, Section 320.—*Credits and securities*. "Property of an intangible nature, such as credits and obligations, including secured obligations, usually has no situs of its own for the purpose of taxation, and is, therefore, usually assessable, particularly where a statute so provides, at the place of its owner's domicile or residence, and not elsewhere. This rule has been held to apply unless the property has acquired a business situs elsewhere. It is not affected by the fact that the note or other evidence of the debt may be deposited elsewhere, that the debt is secured by a mortgage on property situated in another county or taxing district, or that the debt has been reduced to judgment at the domicile of the debtor; and it has been held that a judgment foreclosing a mortgage is not taxable in the county in which the mortgaged land lies where the mortgagee resides elsewhere."

And the following extracts from 51 Am. Jur., to-wit:

51 Am. Jur. 474, Section 463.—"Personal property of an intangible nature, such as credits, bills receivable, bank deposits, bonds, promissory notes, mortgage loans, judgments, and corporate stock, does not admit of an actual location, and as to such property the maxim '*mobilia sequuntur personam*' embodies the general principle in relation to situs for the purposes of taxation."

51 Am. Jur. 475 and 476, Section 464.—"For the purposes of property taxation it is settled, both as a matter of constitutional law and statutory construction, that a debt or credit cannot be assigned a situs for property taxation in a particular state or country other than the domicile of the creditor merely because the debtor is domiciled or resides there. Ordinarily, for taxation purposes, debts can have no locality severed from the person to whom they are due. Applying this rule, it is held that a citizen cannot be taxed on corporate bonds in a county where he does not reside, although that is the location of the corporation."

51 Am. Jur. 476, Section 465.—"While obiter statements are not infrequently found indicating a tendency on the part of the courts to regard bonds, notes, and other forms of commercial paper as constituting not merely evidence of property, but as property itself, thus assimilating them to tangible chattels susceptible of an actual situs determined by their physical locality, the general rule is that for the purposes of taxation of promissory notes and similar instruments for the payment of the money, where the 'debt is inseparable from the paper which declares and constitutes it,' the situs is the place where it is actually and physically held."

51 Am. Jur. 477, Section 467.—"The mere fact that the state in which intangible property of a nonresident owner has acquired a local situs exercises its right to tax such property does not preclude the state of the owner's domicile from taxing the same property. The latter state cannot be deprived, by reason of the owner's activities elsewhere of its constitutional jurisdiction to tax intangibles having an actual situs there."

51 Am. Jur. 479, Section 468.—"It is generally recognized that there may be a 'business situs' in a state other than the

domicil of the owner or creditor in the case of intangibles used in such other state in the local business of the nonresident owner, which will enable that state to exact a property tax measured by the value of the intangibles used there."

51 *Am. Jur.* 483, Section 472.—"The mere presence in the state of the evidences of credits is insufficient to give such credits a business situs in the state for the purposes of taxation, although the physical whereabouts of such evidences of debt are frequently mentioned as a factor to be considered along with other factors, and some of the state tax statutes require the presence in the state of the evidences of debt of a nonresident to make them taxable."

Business situs of intangibles.—" . . . it is usually recognized that intangible property may acquire a business situs, for the purpose of taxation, in a state other than that in which the owner is domiciled, if it becomes an integral part of some local business, . . . the term 'business situs' has been defined as a situs in a place other than the domicile of the owner, where such owner, through an agent, manager, or the like, is conducting a business out of which credits or open accounts grow and are used as a part of the business of the agency, and the courts have laid down certain conditions which ordinarily should exist in order that intangibles may have a business situs apart from the domicile of the owner. Thus, the necessity for some business use of the intangibles involved or some authority to manage, control, or deal with them in a business way in the state in which, it is claimed, a business situs exists, has been asserted or recognized, as has the necessity that the business should have more or less independent status, and in this latter connection it has been laid down that the possession and control of the property right must be localized in some independent business or investment away from the owner's domicile,

so that the substantial use and value of such property right primarily attach to, and become an asset of, the outside business, in other words, while the nonresident may own the business, the business controls and utilizes in its own operation and maintenance the credits and income thereof. So, also, there should usually be some degree of permanency of location of the credits or obligations involved and of continuity of the business or transactions affecting or giving rise to such credits or obligations, as distinguished from a mere temporary business or isolated transactions, and, thus, a mere temporary presence of the intangible property in question, or of the evidence thereof, for a particular purpose, mere presence for safe-keeping, or a single or isolated transaction, is not sufficient. . . ." (84 C. J. S. 234-236, Section 116).

"A 'business situs' would seem to mean what the words indicate, that is, a situs in a place other than the domicile of the owner, where such owner, through an agent, manager, or the like, is conducting a business out of which credits or open accounts grow and are used as a part of the business of the agency. The principle of business situs is, however, inapplicable if there is not a substantial connection of intangibles with some business of their nonresident owners within the state." (51 Am. Jur. 480, Section 469). This Court, in *First Bank Stock Corporation v. Minnesota*, 301 U. S. 234, text 237 and 238, 57 S. Ct. 677, 81 L. ed. 1061, text 1063, recognized the theory of business situs where intangible personal property of a nonresident "become integral parts of some local business." See also *Miller Brothers Company v. Maryland*, 347 U. S. 340, 74 S. Ct. 535, 98 L. ed. 744, relative to the collection of sales and use taxes on sales made by residents of one state to residents of another state. In this case the Court said that "jurisdiction is as necessary to valid legislative as to valid judicial action." We gather from this expression that before the state

wherein the debtor resides may provide for the escheat of intangibles issued by debtors in that state to creditors in another state, such state must acquire jurisdiction over such obligations, debts, etc., that is the intangibles. The creditor has a vested interest or title to such intangibles, which may be divested only under and pursuant to due process of the law. Generally, as appears from the authorities quoted from, cited or referred to above, intangible personal property, such as promissory notes, checks, accounts, dividend checks, etc. have a situs, at least for most purposes, at the place of residence or domicile of the owner thereof, not at the domicile of the issuer thereof.

There is nothing in the record before this Court or otherwise which shows, or tends to show, that the persons, firms and corporations to whom the "(1) uncashed checks for wages, services and supplies; (2) uncashed lease rental checks; (3) unclaimed payments to vendors and others; (4) unclaimed oil and gas royalty checks; and (5) mineral proceeds from lands and leases" (see pages 10, 11 and 12 of the plaintiff's Complaint herein) have in any way created for them a business situs separate and apart from the domicile or residence of their owners. However, in each instance the situs of the debt or obligation above mentioned would, under the above and foregoing authorities, be either at the domicile or residence of their owner, or at such location as the said owner may have established for it through the establishment of a business situs.

Attachment and garnishment.—It is stated in 4 Am. Jur. 590 and 591, Section 67, that "The cases are in great conflict on the question of the situs of a debt for purposes of attachment or garnishment. One line of authorities holds that the situs is at the residence of the creditor, while another holds the situs of a debt due a nonresident to be at the residence of the debtor.

Still another line of authorities hold that the situs is not only at the domicile of the debtor, but exists in any state in which the garnishee may be found, provided the local law of that state permits the debtor to be garnished." This Court, in *Chicago, Rock Island and Pacific Railway Company v. Sturm*, 174 U. S. 710, 19 S. Ct. 797, 43 L. ed. 1144, text 1146, stated that "this is a legal necessity, and considerations of situs are somewhat artificial. If not artificial, whatever of substance there is must be with the debtor. He and he only has something in his hands. That something is the *res*, and gives character to the action as one in the nature of a proceeding *in rem*." In this case the Court cited with approval *Mooney v. Buford and George Manufacturing Company*, 34 U. S. App. 581, 72 Fed. 32, wherein the said appeals court said that "no such fiction, however, is necessary, because the jurisdiction in such a case does not depend upon the situs of the debt, but upon control over the debtor, obtained by means of due process, duly served. Even if, as in cases of domestic attachment, the debtor and the situs of the debt be within the state, effective jurisdiction in garnishment can be acquired only by the service of process upon the debtor." In this connection see generally 7 C. J. S. 262-264, Section 92; 15 C. J. S. 928 and 929, Section 18; 38 C. J. S. 335, et seq., Sections 121 et seq.

The question of danger of double liability in the event of the refusal of the court of another jurisdiction to recognize or give effect to a judgment against a garnishee is evident in the opinions of some of the state courts (4 Am. Jur. 591, Section 68). The Court, in *Parker, Peebles & Knox v. National Fire Insurance Company*, 111 Conn. 383, 150 A. 313, 69 A. L. R. 599, text 605, said that "imposing a double liability upon an innocent debtor is, in any event, a very serious matter, and one generally denied in all courts of justice. It ought to be and is the object of courts to prevent payment of a debt twice over.

'It is, of course, true that every state must enforce its own laws within its own borders for the protection of its own citizens; but either the law, or the construction of it by the courts, in one or the other of the states, is contrary to natural justice, which requires a garnishee, standing indifferent between creditors contending in different states for the same debt, the payment of that debt more than once.' . . . 'the fact that a party owing a debt may be subjected to the injury of being compelled to pay it twice—once directly to his creditor, and then again to a third person for the benefit of his creditor, and so . . . indirectly to his creditor a second time—has always been treated by courts desiring to do justice as a matter of serious consideration, and, in fact, the one thing to be guarded against.'"

We have found no proceeding in garnishment or attachment reported in the books where two states were proceeding in garnishment in separate actions to obtain the same indebtedness from the same debtor. See also Annotation in 69 A. L. R. 609-618, bearing upon the question of double liability in garnishment proceedings. The residence of the debtor and not that of the creditor seems to be material in attachment and garnishment proceedings because such proceedings must be against the debtor and not the creditor, although the creditor must receive notice, in person or constructively, of the proceedings.

State as a party defendant.—"It is an established principle of jurisprudence in all civilized nations, resting upon grounds of public policy, that the sovereign cannot be sued in its own courts or in any other court without its consent and permission. It is inherent in the nature of a sovereignty not to be amenable to the suit of an individual without its consent, and this principle applies with full force to the several states of the Union."

(49 Am. Jur. 301 and 302, Section 91). A sovereign state is not, without its consent, subject to suit in either its own courts, or in those of a foreign state. (48 C. J. S. 23, Section 18). Under these rules of law one state of the United States may not be impleaded by another state in the courts of that state or the courts of any other state. The several states of the Union, to the extent provided in Article III of the United States Constitution, have consented to being sued in the federal courts to the extent therein provided, except to the extent limited by the Eleventh Amendment to the said Constitution. This casts doubt on the authority of any state court to fully protect a debtor from dual liability in escheatment or custody proceedings concerning lost or abandoned property, where the debtor resides in one state and the creditor resides in another, unless each such state is legally made or becomes a party to the litigation. For a judgment in one state to be binding upon another state the court rendering that judgment must have acquired jurisdiction over the parties to the litigation including other states (*Williams v. North Carolina*, 325 U. S. 226, 65 S. Ct. 1092, 89 L. ed. 1577, text 1580 and 1581; 50 J. C. S. 498 and 499, Section 893). Where residence or domicile of the creditor and debtor is in a single state the question of jurisdiction would seem to be of little moment, however, where in different states serious questions of jurisdiction arise. As to the properties and parties in this litigation this Court may acquire jurisdiction of all applicable claimants thereto, including interested states.

Presumption of continuous ownership and residence.—The Supreme Court of Arizona in *Re. Hull Copper Company (Arizona v. Tally, Trustee)*, 46 Ariz. 270, 50 P. 2d 580, 101 A. L. R. 664, had before it a claim by the State of Arizona to certain shares of stock issued by the Hull Copper Company, to pur-

chasers of such stock, which corporation was being liquidated and the owners of such shares of stock could not be located. These stockholders were stockholders of record, such record reflecting their names and addresses as of the date of issuance, however, their whereabouts were unknown as of the date of the liquidation and distribution of the assets of the corporation. This stock consisted of some six hundred shares of stock having a value of \$46,309.20; which the State of Arizona claimed under its Sections 4304-4310, Revised Code, 1928, as being unclaimed by the remaining stockholders, who contended that it should be distributed to them in the ratio of their stock ownership. The stock in question appears to have been issued to stockholders with post office addresses or locations beyond the boundaries of the State of Arizona. In its opinion the said court said that "if the claim of the appellees (other stockholders) cannot be sustained, still less, we think, can that of the state, as set forth in its pleadings, be upheld. In the first place, the only evidence of the residence of these stockholders is that they were *nonresidents* of the State of Arizona. In such case, since the property in question was personal in its character, it would ordinarily follow the residence of the owner, and an *escheat proceeding in this state would not lie.*" (Emphasis supplied.).

The Arizona Court stated that: "In *Turnbull v. Payson*, 95 U. S. 418, 421, 24 L. ed. 437, (text 438 and 439) it is said: 'Where the name of an individual appears on the stock-book of a corporation as a stockholder, the prima facie presumption is that he is the owner of the stock, in a case where there is nothing to rebut that presumption; and, in an action against him as a stockholder, the burden of proving that he is not a stockholder, or of rebutting that presumption, is cast upon the defendant. *Hoagland v. Bell*, 36 Barb. (N. Y) 57; *Hamilton &*

D. Plank Road Co. v. Rice, 7 Barb. (N. Y. 157) 162; *Rockville & W. Turnpike Road v. Van Ness* (Fed. Cas. No. 11,986) 2 Cranch, C. C., (449) 451; *Mudgett v. Horrell*, 33 Cal. 25; *Coffin v. Collins*, 17 Me. 440; *Merrill v. Walker*, 24 Me. 237."

In *Great Northern Railway Company v. Sutherland*, 273 U. S. 182, 47 S. Ct. 317, 71 L. ed. 596, text 599 and 600, this Court stated that corporate "stock is presumed to be owned by the registered owner and that, where stock is stated to be held by the registered owner for another named person, the latter is presumed to own the whole beneficial interest."

In *Finn v. Brown*, 142 U. S. 56, text 67, 12 S. Ct. 136, 35 L. ed. 936, text 939, this Court said that: "It is undoubtedly true, as contended by the defendant, that, as the 50 shares of stock were transferred to him originally without his knowledge and consent, he had a right to repudiate the transaction, but he is presumed to be the owner of the stock when his name appears upon the books of the bank, as such owner, and the burden of proof is upon him to show that he is in fact not the owner."

To the same effect see also *Webster v. Upton, Trustee*, 91 U. S. 65, text 72, 23 L. ed. 384, text 388; *Keyser v. Hitz*, 133 U. S. 138, text 148 and 149, 10 S. Ct. 290, 33 L. ed. 531, text 537; *Whitney v. Butler*, 118 U. S. 655, text 660 and 661, 7 S. Ct. 63, 30 L. ed. 266, text 268.

In 31 C. J. S. 736-738, Section 124, it is said that: "Proof of the existence at a particular time of a fact of a continuous nature gives rise to an inference, within logical limits, that it exists at a subsequent time. . . it will be inferred that a given fact or set of facts, the existence of which at a particular time is once established in evidence, continues to exist so long as

such facts usually do exist. . . . Inferences of continuance are merely inferences of fact and may, therefore, be rebutted."

In 31 C. J. S. 743 and 744, Section 124.—"The presumption of continuance of a fact or condition has been applied to tenure of real or personal property, and to the control thereof. Except where there is evidence to the contrary, where it is shown that certain property belongs to a particular person, the law presumes that the ownership remains unchanged, and a person is presumed to remain in possession of property of which he is shown to have been in possession at one time, although the inference may cease by reason of the lapse of considerable time or the ephemeral character of the subject-matter."

The Court of Appeals of Georgia, in *Hobbs v. Citizen's Bank*, 32 Ga. App. 522, 124 S. E. 72, fourth headnote, stated that "where title to property, even a promissory note, is shown to have been at one time in a certain person, his ownership is presumed to continue until the contrary appears." To the same effect see also *Conner v. Martin*, 46 Ind. App. 141, 92 N. E. 3, text 5.

In 28 C. J. S. 35 and 36, Section 16, the author, on the question of presumption of the continuance of domicile, states that "a domicile, when once established, is presumed to continue until a change is shown, and this presumption may be strengthened by a long-continued residence, and is conclusive where no change is alleged or proved. Residence elsewhere may rebut the presumption as to the continuance of the original domicile, particularly when it is of such a length, or is characterized by such circumstances, as to indicate an intention to adopt the new locality as a domicile; but mere residence elsewhere will not rebut the presumption as to continuance, unless it is inconsistent with an intent to return to the original domicile."

The same result is stated in 17A. *Am. Jur.* 258 and 259, Section 88, as follows: "The general rule, as well stated by Professor Beale, which is supported by the cases with practical unanimity, is to the effect that 'the very fact of actual residence in a place is a circumstance which tends to prove domicile in that place, since it is reasonably inferable from a man's establishing a residence in a place, that that place is his home. The mere fact of residence in a place is therefore *prima facie* evidence of domicile there and, in the absence of other evidence on the point, justifies a finding that the place is the domicile of the one resident there.' Concisely stated, the place where a man lives is taken to be his domicile until facts to the contrary are forthcoming. Residence being a continuous fact, it is presumed to continue."

Basically a state's right and jurisdiction to take the possession of, or to take possession of and escheat, lost, abandoned and unclaimed intangible personal properties, such as wages due, money due for services, rental and royalty checks or obligations, corporate dividends and other similar types of intangible personal property, depends upon the situs of such properties, or upon acquiring personal jurisdiction over the owner thereof. This question of situs of intangible personal property, the same following the residence or domicile of the owner thereof resolves itself largely into a question of fact; that is the situs of the intangible, which is determined by locating or fixing the domicile or residence of the owner of such intangibles. When the domicile of the owner is fixed the location or domicile of the intangible is also fixed and determined; except, in those cases where the owner of such intangibles has given them a "business situs," separate and apart from his domicile or residence. The location of the creditor, not that of the debtor, determines the situs of intangible personal property;

except in those cases where the debtor or holder of such property has given it a business situs elsewhere. Lost, abandoned and unclaimed intangible personal property has its legal situs at the place of residence or domicile of its owner (the creditor); *not* at the place of residence or domicile of the debtor. Unless and until a state has acquired jurisdiction over such intangible personal property of the creditor, it is not entitled to proceed against the debtor to make collection of the obligation due the creditor. The last known place of residence or domicile of the creditor will, for the purposes of custody and escheat proceedings by a state, be presumed to continue until impeached by competent evidence showing an actual change thereof by the said creditor.

CONCLUSION

Custodial proceedings, such as those under the Uniform Disposition of Unclaimed Property Act, as well as escheat proceedings designed to not only obtain possession of unclaimed and abandoned properties, but also to acquire title thereto to the exclusion of the owner or person entitled thereto, are *in rem* or *quasi in rem* proceedings. Therefore, where personal jurisdiction cannot be obtained over the person entitled to the property proceeded against, the Court must acquire jurisdiction of the "res" before it may proceed. Custodial proceedings involve only one "res"; while escheat proceedings involve two "res."

The properties or funds allocated to or liable for the payment of debts, bonds, dividends and other obligations, in the hands of the debtor, are the only *res* involved in custodial proceedings, where there is no attempt to escheat or forfeit the rights and interests of the creditor. There being no attempt on the part of the state seeking such custody, the rights and interests of the creditor are not materially affected.

In the usual escheat or forfeiture proceedings against unclaimed or abandoned properties the state seeks not only possession of the funds or property allocated to or liable for the payment of the debts, bonds, dividends and other obligations, but also the title and property rights of the owner or owners of such debts, bonds, dividends and other obligations to the exclusion of such owner or owners, their heirs and personal representatives. In such proceedings the Court must acquire the *res* of the said fund or property allocated or liable for the payment of said debts, etc., and also the *res* of the said debts, bonds, dividends and other obligations. In other words, for such escheat and forfeiture proceedings, jurisdiction must be

obtained over both the interest of the debtor and the interest of the creditor.

The state wherein the creditor of unclaimed or abandoned property resides or is domiciled has the right to proceed against the *res* in that state, the same being the debts, bonds, dividends and other obligations belonging to the creditor, and obtain the escheat or forfeiture thereof, without also having jurisdiction over the *res* of the funds allocated or liable for the payment of such debts, bonds, dividends and other obligations, through which proceedings the said debts, bonds, dividends, and other obligations would, through such escheat or forfeiture, pass to the said state, thereby substituting the state for and in lieu of the creditor, with the right to make collection thereof.

Should the state of residence or domicile of the debtor, when the creditor resides or is domiciled in another state, take possession of funds allocated for the payment of the obligations due creditors, pursuant to any statute or law of such state, such a state, being without jurisdiction over the "res" of the debt or obligation, whose situs would be in another state, would not have jurisdiction to escheat such obligations or take final possession of the funds allocated for payment, except upon acquiring jurisdiction over the person of the creditor.

Where the creditor resides in one state, and the debtor in another, the situs of the obligation would be in the state where the creditor resides, the said obligation would be a "res" sufficient to support the maintenance of a proceeding by the state of the residence of the creditor, of a proceeding for the escheat or custody of the said obligation. Having acquired, through such a proceeding, the title or possession of the said obligation, such state would be entitled to the fund held by the debtor for the payment of the said obligation, and to maintain a pro-

ceeding for the possession thereof in its own courts, where jurisdiction may be acquired over the said debtor, or, when such jurisdiction may not be acquired, in the courts of the state of residence of the debtor.

Respectfully submitted,

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CHAPTER 717

DISPOSITION OF UNCLAIMED PROPERTY

717.01 Short title.—This act may be cited as the Florida disposition of unclaimed property act.

History.—§31, ch. 61-10.

717.02 Definitions and use of terms.—As used in this act, unless the context otherwise requires:

(1) "Banking organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company.

(2) "Business association" means any corporation, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(3) "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company, engaged in business in this state.

(4) "Holder" means any person in possession of property subject to this act belonging to another, or who is trustee in case of a trust, or indebted to another on an obligation subject to this act.

(5) "Insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities; disability, accident and health insurance; and property, casualty and surety insurance; as all said terms are defined in chapter 624, part V.

(6) "Owner" means a depositor, or a person entitled to receive the funds as reflected on the records of the bank or financial organization, in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this act, or his legal representative.

(7) "Person" means any individual, business association, government or po-

litical subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(8) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications, for the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, or gas, or for the transportation of persons or property.

(9) "Administrator" means the state comptroller.

History.—§1, ch. 61-10.

717.03 Property held by banking or financial organizations.—The following property held or owing by a banking or financial organization is presumed abandoned:

(1) Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within fifteen years:

(a) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(b) Corresponded in writing with the banking organization concerning the deposit; or

(c) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(2) Any funds paid in this state toward the purchase of shares or other interest in a financial organization, or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within fifteen years:

(a) Increased or decreased the

amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(b) Corresponded in writing with the financial organization concerning the funds or deposit; or

(c) Otherwise indicated an interest in the fund or deposit as evidenced by a memorandum on file with the financial organization.

(3) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization is directly liable, including by way of illustration but not of limitation, certificates of deposit, drafts, and traveler's checks, that has been outstanding for more than fifteen years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within fifteen years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(4) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository, or agency or collateral deposit box, in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than fifteen years from the date on which the lease or rental period expired.

History.—§2, ch. 81-10.

717.04 Unclaimed funds held by insurance corporations.—

(1) LIFE INSURANCE.—

(a) Unclaimed funds, as defined in this subsection, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address

of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) Unclaimed funds as used in subsection (1), means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than fifteen years after the moneys become due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding fifteen years.

1. Assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or

2. Corresponded in writing with the life insurance corporation concerning the policy.

(2) INSURANCE OTHER THAN LIFE INSURANCE.—

(a) Unclaimed funds as defined in subsection (1), held and owing by a fire, casualty or surety insurance corporation shall be presumed abandoned if the last known address according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured, the principal, or the claimant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known ad-

dress of the insured, the principal, or the claimant according to the records of the corporation.

(b) Unclaimed funds as used in subsection (2), means all moneys held and owing by any fire, casualty or surety insurance corporation unclaimed and unpaid for more than fifteen years after the moneys become due and payable as established from the records of the corporation either to an insured, a principal, or a claimant under any fire, casualty or surety insurance policy or contract.

(3) Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

History.—§3, ch. 61-10.

717.05 Deposits and refunds held by utilities.—The following funds held or owing by any utility are presumed abandoned:

(1) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than fifteen years after the termination of the services for which the deposit or advance payment was made.

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than fifteen years after the date it became payable in accordance with the final determination or order providing for the refund.

(3) Any sum paid to a utility for a utility service, which service has not, within fifteen years of such payment, been rendered.

History.—§4, ch. 61-10.

717.06 Undistributed dividends and distribution of business associations.—

Any stock or other certificate of ownership, or any dividend, profit distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within fifteen years after the date prescribed for payment or delivery, is presumed abandoned if:

(1) It is held or owing by a business association organized under the laws of or created in this state; or

(2) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

History.—§5, ch. 61-10.

717.07 Property of business associations and banking or financial organizations held in course of dissolution.—

All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within fifteen years after the date for final distribution is presumed abandoned.

History.—§6, ch. 61-10.

717.08 Property held by fiduciaries.—

All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within fifteen years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(1) If the property is held by a bank-

ing organization or a financial organization, or by a business association organized under the laws of or created in this state; or

(2) If it is held by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or

(3) If it is held in this state by any other person.

History.—47, ch. 61-10.

717.09 Property held by state courts and public officers and agencies.—All intangible personal property held for the owner by any court, public corporation, public authority or public officer of this state, or a political subdivision thereof that has remained unclaimed by the owner for more than fifteen years is presumed abandoned.

History.—48, ch. 61-10.

717.10 Miscellaneous personal property held for another person.—All intangible personal property, not otherwise covered by this act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than fifteen years after it became payable or distributable is presumed abandoned.

History.—49, ch. 61-10.

717.11 Reciprocity for property presumed abandoned or escheated under the laws of another state.—If specific property which is subject to the provisions of this act is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to his act if:

(1) It may be claimed as abandoned or escheated under the laws of such other state; and

(2) The laws of such other state

make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

History.—410, ch. 61-10.

717.12 Report of abandoned property.—

(1) Every person holding funds or other property, tangible or intangible, presumed abandoned under this act shall report to the administrator with respect to the property as hereinafter provided.

(2) The report shall be verified and shall include:

(a) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of twenty-five dollars or more presumed abandoned under this act;

(b) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(c) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under twenty-five dollars each may be reported in aggregate;

(d) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(e) Other information which the administrator prescribes by rule as necessary for the administration of this act.

(3) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(4) The report shall be filed before

November 1 of each year as of June 30 next preceding, but the report of insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The administrator may postpone the reporting date upon written request by any person required to file a report.

(5) If the holder of property presumed abandoned under this act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(6) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(7) The initial report filed under this act shall include all items of property that would have been presumed abandoned if this act had been in effect during the ten year period preceding September 30, 1961.

History.—§11, ch. 61-10.

717.13 Notice and publication of lists of abandoned property.—

(1) Within one hundred twenty days from the filing of the report required by 717.12, the administrator shall cause notice to be published at least once each week for two successive weeks in a newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(2) The published notice shall be entitled "Notice of names of persons appearing to be owners of abandoned property," and shall contain:

(a) The names in alphabetical or-

der and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(b) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the administrator.

(c) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the second published notice, the abandoned property will be placed not later than eighty-five days after such publication date in the custody of the administrator to whom all further claims must thereafter be directed.

(3) The administrator is not required to publish in such notice any item of less than twenty-five dollars unless he deems such publication to be in the public interest.

(4) Within one hundred twenty days from the receipt of the report required by 717.12, the administrator shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under this act.

(5) The mail notice shall contain:

(a) A statement that, according to a report filed with the administrator property is being held to which the addressee appears entitled.

(b) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(c) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the administrator to whom all further claims must be directed.

History.—§13, ch. 61-10.

717.14 Payments or delivery of abandoned property.—Every person who has filed a report as provided by §717.12 shall within twenty days after the time specified in §717.13 for claiming the property from the holder pay or deliver to the administrator all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder with the time specified in §717.13, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the administrator, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

History.—§13, ch. 61-10.

717.15 Relief from liability by payment or delivery.—Upon the payment or delivery of abandoned property to the administrator, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the administrator under this act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the administrator pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the administrator shall forthwith reimburse the holder for the payment.

History.—§14, ch. 61-10.

717.16 Income accruing after payment or delivery.—When property is paid or delivered to the administrator under this act, the owner is not entitled to receive income or other increments accruing thereafter.

History.—§15, ch. 61-10.

717.17 Periods of limitation not a bar.—The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the administrator.

History.—§16, ch. 61-10.

717.18 Sale of abandoned property.—

(1) All abandoned property other than money delivered to the administrator under this act may be sold by him. Such sale shall be to the highest bidder at public sale in whatever place in the state affords in his judgment the most favorable market for the property involved. The administrator may decline the highest bid and re-offer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

(2) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale in a newspaper of general circulation in the county where the property is to be sold.

(3) The purchaser at any sale conducted by the administrator pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of title.

History.—§17, ch. 61-10.

717.19 Deposit of funds.—

(1) All funds received under this act, including the proceeds from the sale of abandoned property under §717.17 shall forthwith be deposited by the administrator in the state school fund of the state, except that the administrator shall retain in a separate account an amount not exceeding one hundred thousand dollars from which

he shall make prompt payment of claims duly allowed by him as herein-after provided. Before making the deposit he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of an insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(2) Before making any deposit to the credit of the state school fund, the administrator may deduct:

(a) Any costs in connection with sale of abandoned property.

(b) Any costs of mailing and publication in connection with any abandoned property.

History.—118, ch. 61-10.

717.20 Claim for abandoned property paid or delivered.—Any person claiming at any time an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the administrator.

History.—119, ch. 61-10.

717.21 Determination of claims.—

(1) The administrator shall consider any claim filed under this act and may hold a hearing and receive evidence concerning it. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(2) If the claim is allowed, the administrator shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

History.—120, ch. 61-10.

717.22 Judicial action upon determination.—Any person aggrieved by a de-

cision of the administrator or as to whose claim the administrator has failed to act within ninety days after the filing of the claim, may commence an action in the circuit court of the second judicial circuit in and for Leon county, to establish his claim. The proceeding shall be brought within ninety days after the decision of the administrator or within one hundred eighty days from the filing of the claim if the administrator fails to act. The action shall be tried de novo without a jury.

History.—121, ch. 61-10.

717.23 Election to take payment or delivery.—The administrator, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

History.—122, ch. 61-10.

717.24 Examination of records.—

The administrator may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this act. If any person refuses to permit the examination of his records, the administrator may issue subpoena to compel such person to testify and produce his records; said subpoena to be served by the sheriff of the county where the person resides or may be found. Such person shall be entitled to the same per diem and mileage as witnesses appearing in the circuit court of the state which shall be paid by the state. If any person shall refuse to obey any subpoena so issued or shall refuse to testify or produce his records, the administrator may present his petition to the circuit court of the county where any such person is served with the subpoena or where he resides, whereupon said court shall issue its rule nisi to such person requiring him to obey forthwith the subpoena issued by the

board or show cause why he fails to obey the same, and unless the said person shows sufficient cause for failing to obey the said subpoena, the court shall forthwith direct such person to obey the same, and upon his refusal to comply, he shall be adjudged in contempt of court and shall be punished as the court may direct.

History.—§23, ch. 61-10.

717.25 Proceeding to compel delivery of abandoned property.—If any person refuses to deliver property to the administrator as required under this act, he shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

History.—§24, ch. 61-10.

717.26 Administration.—The administrator shall create a division of his office, to be known as the abandoned property office, for the purpose of administering the provisions of this act and of chapter 716. An appropriation shall be made biennially for the maintenance of such office, and to provide sufficient staff to adequately enforce the provisions of this law. Other divisions of the office of the administrator, as well as all state officers and employees generally, shall assist in the enforcement of this act in connection with the performance of their normal duties.

History.—§25, ch. 61-10.

717.27 Penalties.—

(1) Any person who wilfully fails to render any report or perform other duties required under this act, shall be punished as for a misdemeanor.

(2) Any person who wilfully refuses to pay or deliver abandoned property to the administrator as required under this act shall be punished as for a misdemeanor.

History.—§26, ch. 61-10.

717.28 Rules and regulations.—The administrator is hereby authorized to make necessary rules and regulations to carry out the provisions of this act.

History.—§27, ch. 61-10.

717.29 Effect of laws of other states.—This act shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to September 30, 1961.

History.—§28, ch. 61-10.

717.30 Repeal.—The following sections of Florida Statutes are hereby repealed: §§69.07, 69.16 and 14.07-14.13. This act shall not repeal, but shall be additional and supplemental to the existing provisions of §§54.04-54.06 and 550.164, chapter 716, §§731.28, 731.33 and 965.08(4).

History.—§30, ch. 61-10.

Note.—The repeals cited in the section above did not appear in the title of ch. 61-10.

CERTIFICATE OF SERVICE

I, Richard W. Ervin, Attorney General of Florida, one of the attorneys for the State of Florida, petitioner herein, and member of the Bar of the Supreme Court of the United States, hereby certify that on _____, 1963, I served copies of the foregoing Brief of the State of Florida in support of her Motion for Leave to Intervene in this cause, together with Florida's proposed intervention answer, on each of the following parties and persons, by depositing said copies in a United States post office or mail box, with first class or air mail postage prepaid and addressed as follows:

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I further certify that copies of the said Brief have also been served on the states named in paragraph VI of the plaintiff's Complaint by depositing copies thereof in a United States post office or mail box, addressed to the Attorneys General of each of the said states, with first class or air mail postage prepaid.

RICHARD W. ERVIN
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Tallahassee, Florida

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 13 Original

STATE OF TEXAS,
Plaintiff,

vs.

STATE OF NEW JERSEY ET AL.,
Defendants,

and

STATE OF FLORIDA,
Intervenor.

REPORT OF THE SPECIAL MASTER

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WALTER A. HUXMAN, Special Master.

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REPORT OF THE SPECIAL MASTER

By order of this Court dated February 25, 1963, the undersigned was appointed Special Master in the above-entitled matter. The order contained the following directive:

"It is ordered that Honorable Walter A. Huxman, United States Senior Judge, be, and he is hereby appointed Special Master in this case, with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The master is directed to submit such reports as he may deem appropriate."

Pursuant to the directions, a meeting was held at Topeka, Kansas, on the 18th day of April, 1963, at which time all the parties to the action and the State of Florida, an applicant for intervention, were present by their attorneys as above designated. A pre-trial was had and it was agreed by all parties that they would endeavor to work out a stipulation of fact upon which the questions in issue were to be submitted to the Master.

As a result of negotiations by the parties, an original and a supplemental stipulation of fact have been signed by all the parties and submitted to the Master to be made a part of the record. These stipulations have been transcribed by the reporter and have been made a part of the official transcript. It is upon these stipulations of fact that the Master makes his findings of fact and conclusions of law and recommendations to the Court.

THE PLEADINGS

The Complaint

Texas instituted this action against New Jersey, Pennsylvania, and the Sun Oil Company, a New Jersey Corporation, in the Supreme Court of the United States asking for a declaratory judgment declaring that it alone is entitled to escheat certain intangible property held by the Sun Oil Company as shown in a report filed by the Sun Oil Company with the Treasurer of Texas.¹

1. Pursuant to Article 3272a, Title 53, Vernon's Civil Statutes of Texas, a written report of personal property held by the Sun Oil Company and deemed by such company to be subject to escheat to Texas was filed with the State Treasurer of Texas. Article 3272a requires every person holding personal property subject to escheat under the Texas escheat statutes to file a report thereof with the State Treasurer. The statute defines the term "subject to escheat" as including

The complaint alleges that the property reported by the Sun Oil Company is claimed by the Treasurer of Texas as property subject to escheat under Texas law by reason of having been reported by the holder thereof as abandoned property held within the State of Texas or held without the State of Texas for a person whose last known address was in this State, and such property has its situs in Texas and is subject to the jurisdiction of the courts of Texas.

It is alleged that because both New Jersey and Pennsylvania claim the right to escheat the same property, Texas stayed its hands under its laws and its own courts and sought first to establish its right to escheat the property in controversy in the Supreme Court of the United States in an action in which both New Jersey and Pennsyl-

"... personal property presumed to be subject to escheat by the prima facie conclusions contained in Article 3272, including all personal property (1) of which the existence and whereabouts of the owner are unknown and have been unknown to the holder for more than seven (7) years and (2) on which, from the knowledge and records of the holder it appears that no claim or act of ownership has been asserted or exercised during the past seven (7) years and (3) on which no will of the last known owner has been recorded or probated in the county where the property is situated within the past seven (7) years."

Said statute defines the term "personal property" as including but not limited to:

"... money, stocks, bonds and other securities, bills of exchange, claims for money or indebtedness and other written evidences of indebtedness, dividends, deposits, accrued interest, purchase payments, sums payable on certified checks, certificates of membership in a corporation or association, amounts due and payable under the terms of any insurance policy, security deposits, unclaimed refunds and deposits for utility or other services, funds to redeem stocks and bonds, undistributed profits, dividends, or other mineral estates, and all other personal property and increments thereto, whether tangible or intangible, and whether held within this State, or without the State for a person or beneficiary whose last known residence was in this State."

vania were parties so that a declaration of right could be obtained, binding on all claimants.

While the petition claims \$37,853.53, as the amount involved, it is stipulated that because of subsequent payments, this amount should be reduced to \$26,461.65.

New Jersey's Claim

New Jersey claims the right to escheat all the property in this case on the ground that the debtor, the Sun Oil Company, is incorporated in New Jersey and has its domiciliary residence in that State. At the time of oral argument, it stated that it bottomed its claim on the decision of the Supreme Court in *Standard Oil Company v. New Jersey*, 341 U.S. 428.

Pennsylvania's Claim

Pennsylvania bases its claim to the property on the ground that the Sun Oil Company has its principal office in Pennsylvania and the principal activities of the corporation were carried on in that State.

Florida's Claim

Florida lays claim only to such items as were made payable to persons whose last known address was in Florida.

Sun Oil Company's Position

In its answer, the Sun Oil Company admits that it owes the obligations in question and its willingness to pay them to the State found entitled thereto by the judgment of this Court. It asserts no claim to any of the funds in controversy.

FINDINGS OF FACT

I. Sun Oil Company was incorporated May 2, 1901, and exists as a corporation under the laws of the State of New Jersey.

II. The statutory principal office of Sun Oil Company is located at 15 Exchange Place, Jersey City, New Jersey, where stock and transfer records of the Company are kept in compliance with New Jersey law. The Chase Manhattan Bank, New York, New York, is Transfer agent and Fidelity-Philadelphia Trust Company, Philadelphia, Pennsylvania, is Co-Transfer Agent for the transfer of shares of stock of the Company. Bankers Trust Company, New York, New York, is Registrar and Girard Trust Corn Exchange Bank, Philadelphia, Pennsylvania, is Co-Registrar of the stock of the Company.

III. The Certificate of Incorporation of Sun Oil Company and all amendments thereto are on file with the Secretary of State of New Jersey.

IV. The present principal executive offices of Sun Oil Company are located at 1608 Walnut Street, Philadelphia, Pennsylvania.

V. All meetings of shareholders, directors and committees appointed by the Board of Directors of Sun Oil Company are presently held in Pennsylvania, and all minutes and records relating to stockholders' and directors' meetings and the principal corporate financial records are presently kept at the principal executive offices in Philadelphia.

VI. Sun Oil Company leases or operates 1,442 service stations in Pennsylvania, maintains nine district offices, seven warehouses and one Marine terminal in that State.

VII. The original records of the Gulf Coast Division and The Southwest Division of the Company are maintained in Beaumont, Texas and Dallas, Texas, respectively.

VIII. The Company operates or leases 688 service stations in the State of New Jersey, maintains 4 district offices and storage facilities there, and has a marine terminal and pipeline terminal at Newark, New Jersey.

IX. The Company operates or leases 386 service stations in the State of Florida and also maintains warehouses for bulk storage and delivery at Jacksonville and Ft. Lauderdale, Florida.

X. Sun Oil Company directly or through its subsidiaries is engaged in all branches of the oil business, including the acquisition and development of prospective lands and leases; the production, purchase, sale, transportation and refining of crude oil and its derivatives; the transportation and wholesale and retail marketing of the products of crude oil in the United States and foreign countries; and the sale through distribution outlets of automobile accessories. Crude oil and natural gas producing operations are conducted in twenty-one states and in the Dominion of Canada and Venezuela. Of the Company's crude oil production in 1961, approximately thirty-nine percent was obtained in the State of Texas, fourteen percent in the State of Louisiana, five percent in the State of Mississippi, four percent in the Dominion of Canada, and approximately thirty percent in Venezuela, with the balance distributed among the other States. Of the producing acreage of the Company at December 31, 1961, approximately sixty percent was located in the State of Texas.

XI. Refining operations are carried on at the Company's refineries situated at Marcus Hook, Pennsylvania.

Toledo, Ohio and Sarnia, Ontario. The bulk of crude oil for the Marcus Hook refinery is transported to Texas tide-water ports through a pipeline system operated by its subsidiaries and affiliates and then from such ports to the refinery by means of tankers. Crude oil for the Toledo and Sarnia refineries is transported from production fields through pipeline connections.

XII. The Company's distribution system for movement of refined products includes the operation of its own tankers and barges, the extensive use of truck and truck-trailer combinations of large carrying capacity, and pipeline facilities of subsidiaries.

XIII. The Major part of the Company's refined products is marketed and distributed through the Company's own distributing plants located generally in New England, the Middle Atlantic States (including New Jersey and Pennsylvania), the northern portion of the Middle Western States, the South Atlantic States (including Florida), and in Canada by Sun Oil Company, Ltd. The approximate number of Company operated service stations and dealer outlets (including dealer outlets of wholesale distributors) dispensing branded Sunoco products as of December 31, 1961, exceeded 10,000.

XIV. Sun Oil Company is registered to do business in all of the continental States of the United States.

XV. All officers are elected and their compensation fixed at the present executive offices of the Company in Pennsylvania and major policy decisions are made there.

XVI. Subject to the supervision of the Company's principal executive offices in Philadelphia, Pennsylvania, the Southwest Division and the Gulf Coast Division, with headquarters in Texas, have authority (1) in hiring and

firing personnel [with the exception of top level management personnel]; (2) lease and farm-out agreements; (3) drilling contracts; (4) contracts for seismograph work, well log service, etc.; and (5) purchase of various types of equipment necessary for use in the field in connection with exploration and production of oil and gas. Payment for obligations incurred in connection with the activities enumerated above is made by the Southwest Division and the Gulf Coast Division through bank accounts in Texas.

XVII. The property which Defendant Sun Oil Company reported to the Treasurer of Texas as of December 31, 1961, amounts to approximately \$37,853.37 in miscellaneous sums of money owed by Sun Oil Company to between 1,800 and 2,000 different persons whose whereabouts or identity were unknown when the report was made up. Since the filing of the report and within the time allowed, the owners of various items and their whereabouts were ascertained. A schedule was filed removing items totalling \$11,391.72 where the owners had been found, leaving about 1,730 items totalling about \$26,461.65. Subsequently, the owners of certain other items reported to the State of Texas have been ascertained or their whereabouts have become known.

The items reported to the State of Texas include the following:

(1) Unclaimed wages payable to employees for services performed in Texas, Louisiana and Arkansas, for which checks were issued in Texas on bank accounts in Texas by the Gulf Coast Division office of said Company at Beaumont, Jefferson County, Texas, and by the Southwest Division office of said Company at Dallas, Dallas County, Texas, payable to various persons: (a) whose last known address is in Texas; (b) whose last known address is in states other than Texas; and (c) whose address

is unknown. The general procedure of the Company to make payment for wages is by hand delivery of the checks. If hand delivery is not possible, the checks are subsequently mailed to the last known address of the payee, if any address is known. The checks here involved were (a) not delivered, (b) returned unclaimed to the Company, or (c) never presented for payment. Almost all of the persons entitled to the unclaimed wages involved in this action are persons whose employment with the Company terminated at or about the time the wages became due.

(2) Amounts payable for supplies purchased and services rendered in Texas, Louisiana, Arkansas, California and Mississippi, for which checks were issued in Texas on bank accounts in Texas by the Gulf Coast Division Office of said Company at Beaumont, Jefferson County, Texas, and by the Southwest Division office of said Company at Dallas, Dallas County, Texas, payable to various persons: (a) whose last known address is in Texas; (b) whose last known address is in states other than Texas; and (c) whose address is unknown. It is the general procedure of the Company to make payment for supplies and services by the mailing of checks to the last known address of the person entitled if any address is known. The unclaimed items in this category arose when checks were (a) not delivered, (b) returned to the Company, or (c) never presented for payment.

(3) Amounts payable for employee expenses and other miscellaneous minor fees and charges incurred in Texas and twenty other states, for which checks were issued in Texas on bank accounts in Texas by the Gulf Coast Division office of said Company at Beaumont, Jefferson County, Texas, and by the Southwest Division office of said Company at Dallas, Dallas County, Texas, payable to various persons: (a) whose last known ad-

dress is in Texas; (b) whose last known address is in states other than Texas; and (c) whose address is unknown. It is the practice of the Company to make payment for employee expenses and other miscellaneous minor fees and charges by hand delivery of checks. If hand delivery is not possible, checks are mailed to the last known address of the payee if any address is known. As to unclaimed items in this category, the checks were (a) not delivered, (b) returned to the Company, or (c) never presented for payment.

(4) Amounts payable as royalties on gas and oil production from lands in and rental on leases on lands in Texas, Louisiana, New Mexico and Mississippi for which checks were issued in Texas on bank accounts in Texas (and on bank accounts in Louisiana as to some Louisiana production and leases) by the Gulf Coast Division in Texas and on bank accounts in Texas by the Southwest Division payable to various persons: (a) whose last known address is in Texas; (b) whose last known address is in thirty-one states other than Texas; and (c) whose address is unknown. It is the general procedure of the Company to make payment for royalties on gas and oil production by the mailing of checks to the last known address of the payee if any address is known. The unclaimed items in this category arose when the checks were (a) not delivered, (b) returned to the Company, or (c) never presented for payment.

(5) Mineral proceeds, being fractional mineral interests for which checks have not been issued because of title or other legal requirements preventing payment, reflected by the records of the Gulf Coast Division in Texas and the Southwest Division in Texas on production from land and leases in Texas, Louisiana, New Mexico and Mississippi, and payable to various persons: (a) whose

last known address is in Texas; (b) whose last known address is in twenty-six other states; and (c)whose address is unknown.

(6) Unclaimed cash dividends on the common stock of Sun Oil Company payable to persons whose last known address is in Texas. Such dividends were declared by the Board of Directors in Philadelphia, and funds for payment were deposited in a special dividend account in a Philadelphia bank on which checks were drawn. After two years, moneys to cover unclaimed dividends were transferred from the special dividend account to a general account of the Company in Philadelphia. It is the practice of the Company to mail checks for cash dividends on its stock to the address of the shareholder shown on the books of the Company. In the event such checks are returned, the change of address records of the Company are carefully checked and other efforts are made to ascertain the present address of the shareholder, including inquiries directed to the office of the Company located nearest the last known address of the shareholder. Where dividend checks are not presented for payment, follow-up letters are sent to the shareholder urging him to negotiate the check which has been sent to him. The foregoing steps were pursued unsuccessfully in respect to the unclaimed cash dividends listed on the report made to the State of Texas identifying shareholders whose last known address is in Texas.

(7) Unclaimed payments for deductions from wages for the purchase of war bonds for employees who were hired in and paid from Pennsylvania who are believed to have worked in Pennsylvania and in other states and whose last known address is in Texas. These claims became payable upon the employee being separated from the Company. The records of the Company do not now reflect what efforts were made to effect delivery of the

items shown in the report to the State of Texas under the category of unclaimed payments deducted from wages for the purchase of war bonds for employees. It is known that the persons entitled thereto are no longer in the employ of the Company.

(8) Uncashed checks issued in Oklahoma by the Mid-Continent Division office of said Company at Tulsa, Oklahoma on bank accounts in Oklahoma to various persons whose last known address is in Texas. The nature of the transactions underlying the issuance of these checks is not presently known.

(9) Unclaimed stock scrip certificates for fractional shares of the Sun Oil Company held in Philadelphia, Pennsylvania for persons whose last known address is in Texas, prepared as a result of stock dividends declared in Philadelphia, Pennsylvania by the Board of Directors. The procedure for delivery of stock scrip certificates for fractional shares of Sun Oil Company stock was to mail such certificates to the address shown on the books of the Company. The certificates in question here were returned undelivered. The change of address records of the Company were checked and other efforts made to ascertain the whereabouts of the shareholders without success.

All Company records of debts incurred by the Gulf Coast and Southwest Divisions were entered in, and have since been kept in, the offices of the Gulf Coast Division and the Southwest Division in Texas.

Bookkeeping entries relating to (6) unclaimed cash dividends on common stock, and (9) unclaimed stock scrip certificates, were made in and have since been kept in the principal executive office of Sun Oil Company in Pennsylvania. The stock scrip certificates were issued by the Company's transfer agent, Chase Manhattan Bank of

New York, New York, and were mailed by Sun Oil Company from Philadelphia.

The bulk of items shown on the report to Texas owing to persons whose last known address is in Florida are royalties on production from lands in Texas.

The following statement from the Gulf Coast Division illustrates the manner in which uncashed checks and unclaimed obligations are handled:

From 1908 through 1939, outstanding checks were recorded in the "Outstanding Check Account". The balance of the account was periodically taken into income and transferred to the Philadelphia office.

Beginning in 1940, outstanding checks were recorded in the "Unclaimed Payment Account". By December 1950, the balance in the "Unclaimed Payment Account" had reached \$2,607.27, when all items four years old (dated 1946 and prior) were taken into income and transferred to Philadelphia.

Since 1950, *except for lease rental checks*, practice has been for the Cashier's Department each December to transfer outstanding checks which are two years old to the "Unclaimed Payment Account". If the checks are not cashed within two more years, the "Unclaimed Payment Account" is debited and income is credited. Thus, checks outstanding are taken into income and transferred to Philadelphia four years after the date of issue.

During the years 1955 through 1957, outstanding checks (dated in 1953 through 1955) in amounts over \$50.00 were not put into the "Unclaimed Payment Account". In 1958, these checks over \$50.00 were credited to "Accounts Payable—Unclaimed". (Name change of "Unclaimed Payment Account" with Machinery Accounting in 1956.)

Since 1958, *except for rental checks*, all checks have been credited to "Accounts Payable—Unclaimed"

in December of the year when the checks have been outstanding for two years. When four years old, these outstanding checks are taken into income.

Lease rental outstanding checks, which are an exception to the general practice, when over two years old are discussed with the Lease Rental Department, who in turn get legal advice, by the Cashier's Department to determine if the checks should be left outstanding or transferred to "Accounts Payable—Unclaimed".

A similar statement has been obtained from the Southwest Division as follows:

From 1919 through September 1935, uncashed checks were recorded either as Unclaimed Wages or Unclaimed Checks. In September, 1935, these two accounts were consolidated as one account as Unclaimed Payment Account. At various times uncashed checks were placed in this Account and on June 30, 1949, all checks entered in this account prior to June 30, 1945, were transferred to Miscellaneous Income.

Beginning in July, 1949, all outstanding checks for the previous year, except for lease rental checks, are reviewed and transferred to the Unclaimed Payment Account. In July, 1949 through December 1953, checks that had been held in the Unclaimed Payment Account for four years were transferred semi-annually to Miscellaneous Income. After December, 1954, checks held in the Unclaimed Payment Account for a period of four years are transferred annually to Miscellaneous Income.

Annually, the Title Record Department is requested to review all outstanding Lease Rental checks and specify which checks should be transferred to the Unclaimed Payment Account. Rental checks are transferred to the Unclaimed Payment Account only after the lease has been cancelled. Once in the Un-

claimed Payment Account, the Rental Check is handled the same as all other uncashed checks.

Every effort, through various means such as personal contact or letter, is made to clear these uncashed checks before being transferred to the Unclaimed Payment Account.

In 1955, the account "Unclaimed Payment" was changed to "Accounts Payable—Unclaimed". Accounting procedures remained unchanged.

Where debts are incurred by Sun Oil Company through production divisions, such as the Gulf Coast and Southwest Divisions, operating independently of the principal executive offices and are unclaimed, the result is to increase the operating income reported by the Division to the Home Office. In the event a creditor is found and paid or payment is made of an unclaimed debt to a state under an abandoned property or escheat law, the particular division which incurred the debt originally is charged with the payment. Once an item has been transferred to an unclaimed account, no special bank account is maintained to meet the obligations of the Company, and all items reported to the State of Texas are unsecured and are not now represented by any particular funds, accounts or property earmarked or otherwise set apart or identified for their particular payment.

The items reported to the State of Texas fall into three general classifications:

- (1) Debts for which checks were issued but which were never delivered to the payee and were returned to the Company;

- (2) Debts for which checks were issued which were not returned to the Company or presented for payment;

(3) Debts reflected on the records of the Company for which checks have not been issued.

XVIII. Over the past ten years Sun Oil Company has filed reports of unclaimed property with fifteen States: Arizona, California, Connecticut, Florida, Idaho, Illinois, Kentucky, Massachusetts, Michigan, New Jersey, Oregon, Texas, Utah, Virginia and Washington. Payments have actually been made to four States: Kentucky (\$55.28), Massachusetts (\$2.00), Michigan (\$989.91), and New Jersey (\$17,341.97).

The Commonwealth of Pennsylvania has asserted a broad claim to allegedly escheatable funds in the possession of Sun Oil Company. Sun Pipeline Company, a wholly owned subsidiary of Sun Oil Company, incorporated in Pennsylvania, has filed reports of Escheatable property with Pennsylvania.

The Company's books presently disclose that unclaimed dividends are owing to persons whose last known addresses are in nineteen States and Canada. The Company has stockholders whose addresses include fifty states, the District of Columbia, Canada and twenty-six other countries.

By stipulation, the parties have amplified Paragraph XVI of the original stipulation in the manner hereafter set forth and the Master in amplification of said paragraph finds these additional facts:

I. The Southwest Division of the Gulf Coast Division of Sun Oil Company are divisions of the Production Department of the Company, which is under the direction of a Senior Vice President in the Philadelphia office. Other top officials and certain key men in the Production organization are located in Philadelphia, but many of the executives are in offices away from headquarters. Out-

side Philadelphia the Production Department is comprised of seven divisions (Gulf Coast, Southwest, Mid-Continent, Eastern, Rocky Mt., Canadian, and Latin America) each directed by a manager.

II. The Southwest Division and the Gulf Coast Division, with headquarters in Texas:

1) Have authority in hiring and firing personnel [with the exception of top level management personnel], subject to limitations as to salary and number of employees approved by the Philadelphia office;

2) Have authority to negotiate and execute on behalf of Sun Oil Company lease and farm-out agreements;

3) Have authority to enter into, on behalf of the Company, drilling contracts and contracts for seismograph work, well log services, etc.

4) Have authority to purchase various types of equipment necessary for use in the field in connection with exploration and production of oil and gas, in accordance with monetary limitations and overall plans developed by the Production Department in Texas and approved in Philadelphia.

Payment for obligations incurred in connection with the activities enumerated above is made by the Southwest Division through bank accounts in Texas and by the Gulf Coast Division through bank accounts in Texas and, in the case of lease and farm-out agreements on properties in Louisiana, through bank accounts in Louisiana.

III. Research and Development laboratories are maintained in Richardson and Beaumont, Texas. A geophysical laboratory is located at Amelia, Texas.

XIX. While not strictly a finding of fact, the following statement is deemed necessary for incorporation to

preserve the question New Jersey may want to present to the Supreme Court. At a setting of the case at Topeka, Kansas, October 17, 1963, for the purpose of oral argument, the following occurred. No reporter was present. New Jersey offered in evidence five exhibits. Exhibits 1 to 4, inclusive, were copies of Journal Entries of Judgment in four separate cases in the New Jersey courts in which certain intangibles not involved in this action due from Sun Oil Company were escheated to New Jersey. The offer was rejected by the Master because such exhibits were deemed immaterial. Exhibit 5 was a full copy of the detailed report filed with the Treasurer of Texas on which this action is predicated and from which the Stipulation of Facts was prepared. This offer was rejected on the ground that the numerous individual items making up this voluminous report served no useful purpose and would only confuse what was clearly set out in the agreed Stipulation of Facts. Exceptions were allowed to the Master's ruling.

RECOMMENDED CONCLUSIONS OF LAW

1. Inherent in the power to escheat is the location of property within the borders of the jurisdiction seeking to exercise such power.

2. Since property must be located within the boundaries of the state seeking to acquire title thereto by a proceeding in escheat, only one state has power to escheat such property. That principle applies to the escheat of intangible property as well as tangible property.

3. While intangible property has no spacial existence, it is nonetheless real. In many instances it is a substantial part of an individual's property. It must for all purposes

in judicial proceedings have a situs or location the same as other property.

4. All intangible property results from a debtor-creditor relationship. It is the right of the creditor to receive payment of the debt that constitutes the property. The debt is property only to the creditor. The debtor has no proprietary interest in the intangible property.

5. The situs or location of intangible property is not the same for all purposes. Its situs is controlled by "a common sense appraisal of the requirements of justice and convenience in particular conditions." *Severnore Securities Corp. v. London & Lancashire Ins. Co.*, 174 N.E. 299.

6. The rule "*mobilia sequuntur personam*" is a part of the common law of England and, by adoption, of the United States. It is still the law of the land to be adhered to unless equity requires otherwise. *Blodgett v. Silberman*, 277 U.S. 1.

7. The gist and heart of an escheat proceeding is to establish title to the property in the escheating state. Appropriation or reduction of the property to possession is not a necessary element in the first instance of such a proceeding. That must be done in a separate action.¹

8. Since the debtor has no proprietary interest in the intangible, he is not a necessary party to an escheat proceeding in which the state having the property within its jurisdiction seeks to establish its right of title to such property. Only persons claiming interest in such property are necessary parties. The debtor becomes a necessary party only when payment of the obligation is sought.

1. *State v. Klein*, 106 F.2d 213; *U. S. v. Klein*, 303 U.S. 276; *Crawford v. Commonwealth*, (Pa.) 1 Watt, 480; 30 C.J.S., Escheats, Sec. 19.

9. Justice and equity would seem to require that intangible property, sought to be escheated by a state, be located in the state of last known address of the owner thereof, rather than at the residence of the debtor who has no interest in such property.

10. The last known address of the creditor as appearing on the books of the debtor corporation is adequate and sufficient to establish the residence of the owner of the intangible property for escheat purposes.

11. Texas has exclusive jurisdiction and power to escheat only such of the intangible property involved in this action as was owned by persons whose last known residence or address was in Texas.

12. Florida has exclusive jurisdiction and power to escheat the nine items of intangible property set out in its petition of intervention which was owned by persons whose last known residence or address was in Florida.

13. No party to this action has power or jurisdiction to escheat the property in the action owned by persons who left no last known residence or address. Only New Jersey, the domiciliary residence of the debtor corporation, has power and jurisdiction to require payment of the debts representing such property under its custodial statute.

OPINION

The question involved in this case is what state has jurisdiction to escheat certain intangibles representing debts due from the Sun Oil Company, a New Jersey corporation, to approximately 1,730 claimants totalling about \$26,461.65, as shown by a report filed by the Company with the Treasurer of Texas. The nature of the intangibles involved are set out in the findings and will not be

repeated herein other than to say that they consist of checks and remittances to various creditors in full payment of obligations of the Company. The intangibles may be summarized as follows: (a) Checks sent to persons whose last known address was in Texas; (b) checks to persons whose last known address was in states other than Texas; and (c) checks to persons whose last known address is unknown. Some of these checks have been returned uncashed; others have not been returned and have not been cashed. In addition, the Company is also indebted on open accounts to persons whose last known address was in Texas, to persons whose last known address was in states other than Texas, and to persons whose last known address is unknown. These checks were all drawn on bank accounts in Texas.

Escheat is a proceeding in rem in which a state seeks to acquire title to and take possession of abandoned property for the benefit of all of the people of the state. The exercise of such jurisdiction is valid only if the situs or location of the property or res involved is within the territorial boundaries of the state.¹ No difficulty is experienced when real or personal property is involved. Such property has spacial existence. It is visual and there is never any doubt as to its situs. But the problem becomes more complex and difficult when intangible property is involved.

All cases recognize that because of the absence of physical characteristics, intangible property has no situs in the physical sense but has only such situs as is ascribed to it by law.² Notwithstanding the absence of

1. As stated in Yale Law Journal, Vol. 49, page 241, Note 2, the authorities are legion. See also *Baker v. Baker, Eccles & Co.*, 242 U.S. 394.

2. *Wheeling Steel Corp. v. Fox*, 298 U.S. 193; *Smith v. Ajar Pipeline Company*, 87 F.2d 567, 69; *Severn Securities Corp. v. London & Lancashire Ins. Co.*, (N.Y.) 174 N.E. 299.

physical characteristics which makes such property not readily observable, it is nonetheless real. It forms a great part of the wealth of the Nation. It may be and is bought and sold and passes from one owner to another. It may be pledged as security for loans. In all transactions involving such property, it must be assigned a legal situs.³

An intangible is in no sense property to the debtor. It is property only in the hands of the creditor. It has value only to him. In many instances it forms a large part of his wealth. The Supreme Court in numerous decisions has defined intangible property as property in the hands of the creditor. In *State Tax on Foreign Held Bonds*, 82 U.S. 300, the Court said, "debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors." "To call debts property of the debtors is simply to misuse terms." This statement, in substance, is repeated in numerous decisions.⁴

The principle "*mobilia sequuntur personam*" is of ancient origin. It is firmly imprinted in the common law of England and in the law of our Land. While it is severely criticized by law writers and has been modified in many instances, it is still the law. Speaking of the rule, the Court in *Blodgett v. Silberman*, *supra*, said:

"At common law the maxim '*mobilia sequuntur personam*' applied. There has been discussion and

3. *Blodgett v. Silberman*, 277 U.S. 1; *Baldwin v. Mo.*, 281 U.S. 586.

4. *Liverpoole Ins. Co. v. Orleans Assessors*, 221 U.S. 346; *Blodgett v. Silberman*, 277 U.S. 1, 15; *Baldwin v. Mo.*, 281 U.S. 586, 592; *Railroad Company v. Penn.*, 15 Wall. 300, 320.

criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise, and whether the papers evidencing the same are found in the State of the domicile or elsewhere, and is so fully sustained by cases in this and other courts, that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not."

Placing the situs of intangible property at the residence or domicile of the creditor is based upon equitable considerations. The rule is one intended to work out practical justice and, as stated in the authorities, the courts do not hesitate to depart from the rule when its application would produce injustice.⁵ This principle is well stated by Judge Cardozo in *Severnoe Sec. Co. v. London Lanchashire Ins. Co.*, 174 N.E. 299, as follows:

"The situs of intangibles is in truth a legal fiction, but there are times when justice or convenience requires that a legal situs be ascribed to them. The locality selected is for some purposes, the domicile of the creditor; for others, the domicile or place of business of the debtor, the place, that is to say, where the obligation was created or was meant to be discharged; for others, any place where the debtor can be found. At the root of the selection is generally a common sense appraisal of the requirements of justice and convenience in particular conditions."⁶

Much has been written in judicial opinions and law review articles criticizing the old concept of *res* and *situs*

5. *Conflicts of Laws*, 15 C.J.S. 18(c); *First National Bank v. Main*, 284 U.S. 312, 19.

6. *Smith v. Ajax Pipeline Co.*, 87 F.2d 567, 69, cert. denied 300 U.S. 677; *Conflicts of Laws*, 15 C.J.S., Sec. 18(c).

in in rem or quasi in rem proceedings involving intangibles. Thus, 73 Harvard Law Review, page 956, states:

"It is proposed that the traditional test of jurisdiction be replaced by one which would analyze and balance conflicting interests in order to reach a result consonant with fundamental fairness. This approach, rather than attempting to describe a particular case as an act in rem, quasi in rem, or in personam, and drawing jurisdictional conclusions solely on the basis of the category to which it is assigned, would apply one integrated test and would sustain or deny jurisdiction wholly on the weight of the interests involved."

But if such rule were adopted, it would still be necessary to classify actions as they come into court as actions in rem, quasi in rem, or in personam. In fact that has been done in some courts in recent decisions. (*Atkinson v. Superior Court* (Cal.) 316 P.2d, 960). This case will be analyzed in subsequent sections of the opinion. Applied to intangible property, this concept is in accord with Judge Cardozo's statement in the *Severn* case, that in fixing the situs of intangibles, whether at the residence of the creditor or at the residence of the debtor, a common sense appraisal of the requirements of justice and convenience in particular conditions be considered and applied.

Based upon equitable considerations, courts have quite generally placed the situs of intangible property at the residence of the owner for tax purposes.⁷ In foreign garnishment or attachment proceedings, the courts are divided but the majority holds that the debt is the res and its situs is at the residence of the debtor. The theory that the situs of the res for foreign garnishment is at the residence of the debtor has been criticized and not followed

7. *Rogers v. Hennipen Co.*, 240 U.S. 181; *Farmers Loan & Trust Co. v. Minn.*, 280 U.S. 204; *Baldwin v. Missouri*, 281 U.S. 586.

in all cases upholding publication service on a non-resident creditor in foreign garnishment proceedings. In *Mooney v. Buford & George Mfg. Co.*, 72 Fed. 32, the court held that in garnishment proceedings against a debtor of a defendant who cannot be personally served because of his out-of-state residence, the jurisdiction of the court does not depend upon the situs of the debt, but upon the control over the debtor by means of processes served upon him. The *Mooney* case was cited with approval by the Supreme Court in *Chicago, Rock Island and Pacific Railway Co. v. Sturm*, 174 U.S. 710, where, in upholding a foreign attachment on intangibles, the court said:

"The idea of locality of things which may be said to be intangible is somewhat confusing, but if it be kept up the right of the creditor and the obligation of the debtor cannot have the same, unless debtor and creditor live in the same place."

The Court did not rest its decision on the ground of situs of the res, it said:

"But we do not think it is necessary to resort to the idea at all or give it important distinction. The essential service of foreign attachment laws is to reach and arrest the payment of what is due and might be paid to a non-resident to the defeat of his creditors. To do it he must go to the domicile of his debtor, and can only do it under the laws and procedure in force there."⁸

The common-law concept of jurisdiction is based upon power over property or persons present.⁹ In rem jurisdiction requires that property be located in the state seeking to exercise such power. No difficulty is experienced

8. See also *Hanson v. Denckla*, 357 U.S. 235.

9. *McDonald v. Mabey*, 243 U.S. 90, 91; 59 Michigan Law Review, page 761.

when real or tangible personal property is involved. There is never any question as to its location. *Pennoyer v. Neff*, 95 U.S. 714, is a leading case exemplifying the power theory of jurisdiction.¹⁰ That case held that before there can be an in rem proceeding, there must be a seizure of property within the state.

Since escheat is a proceeding in rem or quasi in rem in which a state seeks to establish its title to property belonging to one who presumably is dead, leaving no surviving heirs, successors, or assigns, by analogy, the rules of jurisdiction laid down in the *Neff* case apply to such proceedings. There must be within the state property over which the state can exercise jurisdiction in such an action. When intangible property is sought to be escheated, before the jurisdictional question can be resolved, the question must first be asked and answered—What is the intangible property and where is it located for the purpose of escheat? It can have but one location for escheat purposes.

Different rules for the determination of the situs of intangible property in escheat actions have been applied. It has been held (1) that the situs of intangible property is controlled by the rule "*mobilia sequuntur personam*"; (2) that the situs of such property should be placed in the state which has the controlling contacts with the transactions resulting in the creation of the property; and (3) that the res is the debt and that since the debtor is the holder of the creditor's property, its situs is with him.

In *In re Lyons Estate*, 26 P.2d 615, the Supreme Court of Washington applied the rule "*mobilia sequuntur personam*" and held that Washington was without jurisdic-

10. See also *Harris v. Balk*, 198 U.S. 215, 222, 23.

tion to escheat a bank deposit in a Washington bank belonging to a depositor in Alaska who had died intestate without heirs, successors and assigns. The Court quoted, with approval, the language of the Supreme Court in *Railroad Company v. Pennsylvania*, 15 Wall. 300, 320, as follows:

"All the property there can be in the nature of things in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due."

The deposit in this case was evidenced by a savings bank deposit book. The same result was reached by the Arizona Supreme Court in *In re Hull Copper Company*, 50 P.2d 560. There, Arizona sought to escheat shares of stock in an Arizona Corporation belonging to a non-resident of that state. In denying the right of Arizona to escheat this stock owned by a non-resident, the Court said:

"In the first place, the only evidence as to the residence of these stockholders is that they were non-residents of the State of Arizona. In such case, since the property in question was personal in its character, it would ordinarily follow the residence of the owner, and an escheat proceeding in this state would not lie."

Michigan reached a different result, although on a somewhat different ground in *In re Rapoport's Estate*, 26 N.W.2d 777. Involved in that case was the disposition of the proceeds in an ancillary probate proceedings in Michigan of the estate of a non-resident who had died without heirs. The court recognized the general rule that the situs of intangible assets is the domicile of the owner unless fixed by some positive law, and applies to the descent and distribution of personal property. The court,

however, held that the passage of the Michigan Escheat Law overruled the doctrine of the situs of domicile insofar as escheated estates are concerned.

In *re Menschefrend's Estate*, 128 N.Y.S. 736, involved intangibles in New York of a non-resident dying intestate without heirs. Possession was taken by New York under the abandoned property act. The court upheld the jurisdiction of New York to take possession of the property under the abandoned property act. However, the opinion makes it clear that the decision would be the same had the action been one for direct escheat. The right of New York to escheat this intangible property was rested on the ground that the assets were in New York. It cited in support, Beal, *Conflicts of Law*, Vol. 2, Paragraph 309, as follows:

"The escheat of chattels or more accurately the seizure of chattels to the state as bona vacantia is not a matter of succession on death. It is rather a right to confiscate property to which there is no other claimant. The state of situs refers this to the law of no other state. It seizes its own. A more difficult question arises when the movables left vacant are intangible, like a bank deposit in one state of a person domiciled in another. It has been held in such a case that after the deposit has been collected by an ancillary administration, it should not go to the state where the deposit was, on the ground that intangibles have a situs at the domicile of the owner.¹ A different result might, it seems, be reached. As applied to this case, the result might almost be said to be based upon a fiction. The picture of bona vacantia is that of movables without an owner being taken by the officers of the state. In reality the money which, represented by the bank deposit, was where the bank was when it was proved to be without an owner."

¹1. In *re Lyons Estate*, 175 Wash. 115, 26 P.2d 615 (1933)."

53 Michigan Law Review, at Page 613, analyzing the *Menschefrend* case, *supra*, states:

"Whatever the rationale, the result is consistent with the current trend and authority. It thus recognizes that the control over the debt by the state in which the debtor is domiciled, which control could be manifested in garnishment or collection proceedings during the life of the creditor, should not be affected merely by the death of the creditor."

The principles involved in an escheat action are, however, so different from those in a foreign attachment or garnishment proceeding that the conclusions expressed in this article are not persuasive. The reasons courts take jurisdiction in such cases is that the state is concerned to see that a foreign creditor pays his debts to a resident of a state to whom such foreign creditor is indebted. The only question in an escheat action is the right of a state to take title to and ultimately possession of intangible property now having no owner. Conflicting claims against the owner of the property are not involved as they are in foreign garnishment or attachment proceedings.

It seems to your Master that authors and text writers place too much emphasis on personal control of the creditor or debtor, or both, in escheat proceedings involving intangible property. The only thing that is necessary for a valid escheat proceeding of tangible property is that it be located in the state. The same should be true when intangible property is involved. We are still dealing with property and the only thing necessary to give a state jurisdiction to escheat such property is that it be located within the state.

A second theory of jurisdiction in in rem or quasi in rem proceedings is the so-called "sufficient contacts test". It has been referred to in a number of cases by the Su-

preme Court. A leading case in support of this rule is *Atkinson v. Superior Court*, (Cal.) 316 P.2d 960. In that case the American Federation of Musicians Union had executed a contract in California with the employers of the plaintiff musicians providing that certain royalty payments were to be paid to a trustee for specified trust purposes instead of to the musician employees. The trustee was a resident of New York where the trust funds were located. The employees instituted an action in the California courts against their employer, the American Federation of Musicians and the New York Trustee. Personal service of summons was had on the employer, the American Federation of Musicians, and publication service on the New York Trustee. The question was whether the California court obtained jurisdiction over the New York Trustee and trust funds in his possession in that state. The court held that a personal judgment could not be entered against the Trustee but that "the relevant contacts with this state are significant, however, in deciding whether due process permits exercising a more limited or quasi in rem jurisdiction to determine his and plaintiffs' interest in the intangibles in question." The court held that the contacts with the State of California were sufficient to give the state quasi in rem jurisdiction to determine plaintiffs' interest in the trust funds in the trustee's possession.

The Supreme Court gave consideration for the first time to this question in *Securities Savings Bank v. California*.¹¹ In that case, California sought custodial possession which would perhaps lead to ultimate escheat of abandoned bank deposits of non-residents in a State Bank. The court stated that the debts arose out of contracts made and to be performed in California. It then stated, "Thus

11—263 U.S. 282.

the deposits are clearly intangible property within the State." The court held that a seizure of these debts was an in rem proceeding as to the bank authorizing publication service on the absent depositors. This case did not involve conflicting rights of different states.

The next case before the court was *Anderson National Bank v. Lockett*, 321 U.S. 233. In that case, Kentucky took possession of abandoned bank deposits under its custodial statute. The case concerned itself primarily with a question of due process by service of publication notice on the absent depositors.

For the first time in *Connecticut Ins. Co. v. Moore*,¹² the court noted the conflicting interests of different states in the escheat of intangibles but such interests were not considered or disposed of by the court. The decision in the Moore case is a very narrow one. The court limited its decision to holding that the State of New York had power to take custodial possession of and subsequently escheat sums due on insurance policies for delivery in New York by non-resident insurance companies on lives of insured persons then residing in New York where the insured continued to be a resident of New York and the beneficiary was a resident at the maturity of the policy. In its opinion, the court said the question was "whether the State of New York has sufficient contacts with the transactions here in question to justify the exertion of the power to seize abandoned monies due to its residents." This seems to be a departure from the court's holding in *Securities Savings Bank v. California*, *supra*, that the situs of the res, the debt, was at the resident of the debtor, the bank. It would seem immaterial that in one case we have a debt evidenced by a deposit and in the other, a

12. 333 U.S. 541.

debt of a sum due on an insurance policy, because in both we have a debtor and creditor relationship.

As the Master interprets the majority opinion of the Court in *Standard Oil Company v. New Jersey*,¹³ the court veered away from the philosophy of the Moore decision and reverted to that of *Securities Savings Bank v. California*. In this case, the Standard Oil Company, a New Jersey corporation, was indebted to non-residents of New Jersey for twelve shares of stock and declared dividends which were considered abandoned property. The court held that the "res" was the debt represented by the stock certificates and the dividends and that its situs was at the domiciliary residence of the debtor corporation and that this gave the domiciliary state in rem jurisdiction justifying publication service against the non-resident creditors. This is the gist of the opinion as the Master interprets it. It is not deemed necessary to discuss the many collateral questions raised in this case, but not decided, because the members of the court are thoroughly familiar with them.

Of the three tests, the so-called "sufficient contacts test" seems the least desirable. In the first place, no satisfactory standards can be established to determine what constitutes sufficient contacts and more important yet, as suggested by Justice Jackson in his dissent in *Connecticut Mutual Life Insurance Co. v. Moore*, *supra*, a number of states could perhaps establish sufficient contacts to sustain jurisdiction under this test. This would result in multiple escheats and subject a debtor to more than one payment, or, if the court should hold that the first escheat proceeding constituted res judicata and was binding on all states, then the "race would be to the swift."

13. 341 U.S. 428.

Justice and convenience are the paramount factors to be considered in fixing a situs for intangible property. Especially is that true when applied to escheat of intangible property. Justice would seem to require that its situs be fixed at the residence of the creditor of such property. It is his property; it belongs to him. Ordinarily, he has in his possession evidence of such property. Paraphrasing what the Minnesota Supreme Court said in *First Trust Company of St. Paul v. Matheson*,¹⁴ 87 A.L.R., 478, 246 N.W. 1,

"The ordinary person would have difficulty in understanding that he has no property in the vault where he keeps his bonds [or uncashed checks as in this case]; that his property in the obligations thereby evidenced was not located with and in the bonds. Such extreme subtlety in dealing with the affairs of everyday people must be avoided by courts if the latter are not to force results never contemplated and even opposed to actual and lawful intention."

It is estimated that the abandoned intangible property in the United States amounts to fifteen billion dollars and is growing at the rate of one billion dollars per year.¹⁴ This property was earned as the results of operations consummated in the states in which the owners of the property lived, under contracts entered into there, and under the protection of the laws of such states. These are powerful equities in favor of placing the situs of such property, during the life of the owners, in the state of their residence. Should the death of the owner shift the situs of such property to the domiciliary residence of the debtor corporation and permit the state of incorporation to claim title thereto and collect it and mingle it with its other funds?

14. Ohio State Law Journal, Vol. 4, No. 2, citing Wall Street Journal, January 22, 1961, page 1, Col. 1.

It is urged that the addresses appearing on the books of the corporation are not necessarily the real addresses of the employees. It is stated that it is common knowledge that individuals use different addresses for different purposes and that particularly in matters of business an address may be used that is not the address of the individual. Conceding all this, it does not follow that inequities result from accepting the address given by the employee at the time he undertook the work, out of which the intangible property arose, the place where he expected to be paid, as his address for the purpose of fixing the situs for such property in an escheat action. In such a proceeding, we are not concerned with litigation by private litigants in which the strict legal domicile of the litigants may be an important factor. We are concerned only with which of the two states shall take possession of property, its only claim thereto being that the lawful owner thereof died without heirs or successors. In such a proceeding, the address given to the debtor corporation should be sufficient to establish situs for escheat purposes.

The adoption of this rule would, of course, mean that no state could escheat property of creditors whose last address was unknown. It could be urged that this would result in unjust enrichment to the debtor corporation. But not all enrichment resulting from the inability of a debtor to pay his debt because of the unknown whereabouts of the creditor is unjust. Furthermore, it is a matter of which we may take judicial knowledge that many states have so-called custodial statutes under which they may take possession of unclaimed abandoned funds and hold them for the rightful owner, and upon his failure to claim them within a reasonable time, deposit them with other state funds. New Jersey has such a statute. Under it New Jersey could take possession of all the funds in this case.

where the owner thereof left no last known residence or address.

In *Standard Oil Company v. New Jersey*, *supra*, at page 439, the court speaks of the power of the state to seize the debt by jurisdiction over the debtor and since it is the obligation to pay that is seized, the jurisdiction of the debtor corporation effects a seizure. Seizure of the obligation to pay and demanding payment are not the same. The obligation to pay is the creditor's property in the intangible. Seizing that obligation by the state is the equivalent of vesting the title of the property in the state. It is your Master's view that the power of a state to maintain escheat proceedings of intangibles does not, in the first instance, depend upon jurisdiction over the debtor. If the gist of an escheat action is to perfect title in the state where intangible property is located, then only those who claim an interest in the property are necessary parties and since the debtor has no proprietary interest in the intangibles, he is not a necessary party. The debtor becomes a necessary party only when demand for payment is sought to be enforced in an action in a court of competent jurisdiction.

30 C.J.S., Escheats, Section 19, states the rule as follows: "After the state has established its right to the property, it may pursue any remedy to obtain possession of it, whether it is a remedy existing at common law or given by statute."¹⁵

In *State v. Klein*, 106 F.2d 213, Brown, for herself and all others similarly situated, brought an action against Pennsylvania Casualty Company to recover the sum of \$1,923,408.16 for bonds past due. Judgment was entered for that sum. Some of the bondholders could not be found

15. Citing *Crawford v. Commonwealth*, (Pa.) 1 Watt. 480.

and their share was paid into the registry of the United States District Court and thereafter was deposited in the United States Treasury.

Thereafter, Pennsylvania instituted an action to escheat the unpaid fund. In the petition, it was alleged that it was necessary to establish title to the fund in Pennsylvania so it could pursue its remedy against the United States. In the opinion, the State Court said:¹⁶

"It may be conceded that the state cannot take possession of property in the custody of the federal government, but that fact need not prevent the judicial determination by the state of the succession to unclaimed property within its borders."

The Court held that:

"* * * this proceeding in the state court was necessarily instituted to determine the fact of escheat, and, the fact being found, to enable the Commonwealth then to present its claim to the District Court in control of the fund * * *."

On appeal, the Supreme Court, in *U. S. v. Klein*, 303 U.S. 276, affirmed the decision. The Court said:

"The present decree for escheat of the fund is not founded on possession and does not disturb or purport to affect the Treasury's possession of the fund or the district court's authority over it. * * * At most the decree of the state court purports to be an adjudication upon the title of the unknown claimants in the fund by a proceeding in the nature of an inquest of office as in the case of escheated lands * * * and to confirm the authority of appellee to make claim to the moneys."

However, in this case, Texas does have jurisdiction over the Sun Oil Company by virtue of its business operations in

¹⁶ *In re Escheats of Money*, 186 Atl. 600, 602.

Texas. Judicial process can be served on that company. If the situs of the property due to persons whose last known address was in Texas is placed in that State for escheat purposes, it would seem to your Master that Texas would have jurisdiction of the owner of the property for the purpose of having the title of the property vested in Texas, and would have jurisdiction of the debtor for the purpose of collecting what now belongs to the State.

Not much equity or fairness can be urged in favor of a rule fixing the situs of an absent owner's intangible property at the domiciliary residence of the debtor corporation for escheat purposes. Sun Oil Company has no property in New Jersey, no bank accounts or property of any kind. All its assets are at its principal office in Pennsylvania and at its division headquarters in Texas and other states where divisions are maintained. It would thus seem to be a rather farfetched and harsh fiction of law to say that all intangible property in this case is located at the domiciliary residence of the debtor corporation in New Jersey.

The question then seems to boil down to this. Does the ease and uniformity of administration of the debtor situs rule outweigh the strong equities in favor of the states in which the creditors resided and in which it seems it must be said their property was located at the time of their death or disappearance? I think we may take judicial knowledge of the fact that most large interstate corporations are incorporated in a comparatively few states, generally along the Atlantic Seaboard. Is the ease and uniformity of administration of escheat of intangible property sufficient to funnel fifteen billion dollars of abandoned intangible property into the debtors' states when this property was owned by creditors in all the states at

the time of their death or disappearance? That is the question that must in the end be answered.

Your Master finds himself in accord with the views of Mr. Justice Frankfurter expressed in *Standard Oil Company v. New Jersey*, *supra*, in which he said: "On that basis, the State where the last known owner was domiciled certainly has a better claim to abandoned stock than a State in which it happens that the corporation is subject to process."

Your Master concludes that equity will best be served by placing the situs of intangible property for escheat purposes in the state of the last known address of the owner thereof.

The only costs incurred by the Master were for reportorial services and printer's fees. These have been paid from a fund ratably contributed to by the four states, parties to this action. The balance remaining in the fund has been repaid to the four states in equal proportions. Since all the states in this action are equally interested in the outcome thereof, costs in the Supreme Court should be assessed on that basis.

Your Master wishes to express his appreciation for the opportunity to perform his last judicial service for the Supreme Court with the hope that if his views are not approved by the Court, his efforts have nonetheless been of some benefit in the solution of this perplexing problem.

All of which is respectfully submitted to the Court for its consideration.

WALTER A. HUXMAN,
Special Master.

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1963

NO. 13 ORIGINAL

STATE OF TEXAS,

Plaintiff.

v.

STATE OF NEW JERSEY, ET AL.,

Defendants.

STATE OF FLORIDA,

Intervenor

EXCEPTIONS TO THE REPORT OF THE
SPECIAL MASTER AND SUPPORTING BRIEF

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1963

NO. 13 ORIGINAL

STATE OF TEXAS,

Plaintiff

v.

STATE OF NEW JERSEY, ET AL.,

Defendants

STATE OF FLORIDA,

Intervenor

EXCEPTIONS TO THE REPORT OF THE
SPECIAL MASTER AND SUPPORTING BRIEF

EXCEPTIONS

The Plaintiff, State of Texas, excepts generally to the Conclusions of Law and the Opinion of the Special Master heretofore filed with the Court and in support of such exceptions respectfully submits the following Brief.

JURISDICTION

The jurisdiction of the Court in this action is original and exclusive under the provisions of Section 2 of Article III of the United States Constitution and Title 28, United States Code, Section 1251(a)(1).

Texas v. Florida, 306 U.S. 398, 563 S.Ct. 563, 83 L.Ed. 840 (1939); *Western Union Telegraph Company v. Pennsylvania*, 368 U.S. 71, 82 S.Ct. 199, 7 L.Ed.2d 139 (1961).

STATUTES INVOLVED

The claim of the State of Texas to the intangibles here involved is predicated upon Article 3272a, Title 53, Revised Civil Statutes of Texas (Vernon 1948), which is set forth at length in the Appendix. The scope of Article 3272a is succinctly presented by the following provisions of Section I of such Article:

“(a) The term ‘person’ as used in this Article means any individual, corporation, business association, partnership, governmental or political subdivision or officer, public authority, estate, trust, trustee, officer of a court, liquidator, two (2) or more persons having a joint or common interest, or any other legal, commercial, governmental or political entity, except banks, savings and loan associations, banking organizations or institutions.

“(b) The term ‘personal property’ includes, but is not limited to, money, stocks, bonds and other securities, bills of exchange, claims for money or indebtedness and other written evidences of indebtedness, dividends, deposits, accrued interest, purchase payments, sums payable on certified checks, certificates of membership in a corporation or association, amounts due and payable under the terms of any insurance policy, security deposits, unclaimed refunds and deposits for utility or other services, funds to redeem stocks and bonds, undistributed profits, dividends, or other interests, production and proceeds from oil, gas and other mineral estates, and all other personal property and increments thereto, whether tangible or intangible, and whether held within this State, or without the State for a person or beneficiary whose last known residence was in this State.

"(c) The term 'subject to escheat' shall include personal property presumed to be subject to escheat by the prima facie conclusions contained in Article 3272, including all personal property (1) of which the existence and whereabouts of the owner are unknown and have been unknown to the holder for more than seven (7) years and (2) on which, from the knowledge and records of the holder it appears that no claim or act of ownership has been asserted or exercised during the past seven (7) years and (3) on which no will of the last known owner has been recorded or probated in the county where the property is situated within the past seven (7) years."

QUESTION

Where a company chartered under the laws of New Jersey, registered to do business in all of the states of the continental United States, maintains its executive offices in Pennsylvania and two of its seven division offices in Texas, though various transactions occurring through such offices, becomes obligated to persons whose last known addresses are in Texas, Florida, Pennsylvania, New Jersey and other states, or whose addresses are unknown, all of which obligations, by reason of the period of time for which they have remained outstanding, are subject to the conflicting claims of such named states under their respective escheat or custody statutes—which of the named states is entitled to take such obligations under its escheat or custody statutes?

STATEMENT OF THE CASE

The State of Texas, as Plaintiff, moved to invoke the original and exclusive jurisdiction of this Court in "controversies between two or more states" as provided in Section 2 of Article III of the United States

Constitution and Section 1251(a)(1), Title 28, United States Code, on the 1st day of May, 1962, by filing with this Court its Motion for Leave to File Bill of Complaint and Complaint, naming therein as Defendants: the State of New Jersey, the State of Pennsylvania and Sun Oil Company.

The Court granted the Motion for Leave to File Bill of Complaint by its order entered on the 22nd day of October, 1962. After the entry of such order the State of Florida filed with the Court its Motion for Leave to Intervene in this action.

On the 25th day of February, 1963, the Court ordered that the Honorable Walter A. Huxman, United States Senior Judge, be appointed Special Master to hear testimony, receive evidence, consider the Motion for Leave to Intervene filed by the State of Florida and make all necessary reports and recommendation to the Court. On the 10th day of May, 1963, the Special Master by his report to the Court recommended that the State of Florida be granted leave to intervene and on the 3rd day of June, 1963, the Court ordered that the State of Florida be granted leave to intervene.

This controversy involves the conflicting claims of the State of Texas, New Jersey, Pennsylvania and Florida to all or portions of the same intangible obligations owed by Sun Oil Company to various persons whose identity and/or whereabouts have been unknown for a sufficient length of time to come within the terms of the escheat statutes of these four states.

New Jersey filed a suit in its state courts on or about August 3, 1961, to force Sun Oil Company to relinquish custody of this property to the State Treasurer of New Jersey, where such property will, after two years, escheat to New Jersey in a summary action. Sun Oil

Company is defending against such suit on the ground that the New Jersey Courts lack the power to require Sun Oil Company to relinquish the property to New Jersey since other states are claiming this same property and a judgment in the New Jersey courts will not protect Sun Oil Company from the claims of other states to this property.

Pennsylvania notified Sun Oil Company on or about April 1, 1962, that it is claiming this same property under its escheat statutes and has called for an audit of the property.

Texas received from Sun Oil Company on January 2, 1962, a written report of this property, certified by the Treasurer of Sun Oil Company as being property subject to escheat under the laws of Texas. Said report was filed pursuant to the requirements of the Texas escheat statute, which statute authorizes the Attorney General to institute a suit to escheat such property in the Texas courts at the expiration of 120 days from the date the report was received.

The State of Florida has asserted its claim to certain of these obligations by way of its intervention in this controversy.

The present controversy is not a proceeding to declare the escheat of any of these obligations to either of the party states. It is merely a proceeding to determine which state has the right to assert its power to take the obligations in question under its escheat laws. The ultimate escheat of these obligations must be deferred to a subsequent proceeding in the state courts against Sun Oil Company and the persons to whom these obligations are owed. No action to escheat these obligations will be taken in the state courts by any of

the party states, pending the outcome of this proceeding.

The parties to this controversy have stipulated to the following facts:

I. Sun Oil Company was incorporated May 2, 1901 and exists as a corporation under the laws of the State of New Jersey.

II. The statutory principal office of Sun Oil Company is located at 15 Exchange Place, Jersey City, New Jersey, where stock and transfer records of the Company are kept in compliance with New Jersey law. The Chase Manhattan Bank, New York, New York, is transfer Agent and Fidelity-Philadelphia Trust Company, Philadelphia, Pennsylvania; is Co-Transfer Agent for the transfer of shares of stock of the Company. Bankers Trust Company, New York, New York, is Registrar and Girard Trust Corn Exchange Bank, Philadelphia, Pennsylvania, is Co-Registrar of the stock of the Company.

III. The Certificate of Incorporation of Sun Oil Company and all amendments thereto are on file with the Secretary of State of New Jersey.

IV. The present principal executive offices of Sun Oil Company are located at 1608 Walnut Street, Philadelphia, Pennsylvania.

V. All meetings of shareholders, directors and committees appointed by the Board of Directors of Sun Oil Company are presently held in Pennsylvania, and all minutes and records relating to stockholders' and directors' meetings and the principal corporate financial records are presently kept at the principal executive offices in Philadelphia.

VI. Sun Oil Company leases or operates 1,422 service stations in Pennsylvania.

VII. The original records of the Gulf Coast Division and the Southwest Division of the Company are maintained in Beaumont; Texas and Dallas, Texas, respectively.

VIII. The Company operates or leases 688 service stations in the State of New Jersey, maintains 4 district offices and storage facilities there, and has a marine terminal and pipeline terminal at Newark, New Jersey.

IX. The Company operates or leases 386 service stations in the State of Florida and also maintains warehouses for bulk storage and delivery at Jacksonville and Ft. Lauderdale, Florida.

X. Sun Oil Company directly or through its subsidiaries is engaged in all branches of the oil business, including the acquisition and development of prospective lands and leases; the production, purchase, sale, transportation and refining of crude oil and its derivatives; the transportation and wholesale and retail marketing of the products of crude oil in the United States and foreign countries; and the sale through distribution outlets of automobile accessories. Crude oil and natural gas producing operations are conducted in twenty-one States and in the Dominion of Canada and Venezuela. Of the Company's crude oil production in 1961, approximately thirty-nine percent was obtained in the State of Texas, fourteen percent in the State of Louisiana, five percent in the State of Mississippi, four percent in the Dominion of Canada, and approximately thirty percent in Venezuela, with the balance distributed among the other States. Of the producing acreage

of the Company at December 31, 1961, approximately sixty percent was located in the State of Texas.

XI. Refining operations are carried on at the Company's refineries situated at Marcus Hook, Pennsylvania, Toledo, Ohio and Sarnia, Ontario. The bulk of crude oil for the Marcus Hook refinery is transported to Texas tidewater ports through a pipeline system operated by its subsidiaries and affiliates and then from such ports to the refinery by means of tankers. Crude oil for the Toledo and Sarnia refineries is transported from production fields through pipeline connections.

XII. The Company's distribution system for movement of refined products includes the operation of its own tankers and barges, the extensive use of truck and truck-trailer combinations of large carrying capacity, and pipeline facilities of subsidiaries.

XIII. The major part of the Company's refined products is marketed and distributed through the Company's own distributing plants located generally in New England, the Middle Atlantic States (including New Jersey and Pennsylvania), the northern portion of the Middle Western States, the South Atlantic States (including Florida), and in Canada by Sun Oil Company, Ltd. The approximate number of Company operated service stations and dealer outlets (including dealer outlets of wholesale distributors) dispensing branded Sonoco products as of December 31, 1961 exceeds 10,000.

XIV. Sun Oil Company is registered to do business in all of the continental States of the United States.

XV. All officers are elected and their compensation fixed at the present executive offices of the Company in Pennsylvania and major policy decisions are made there.

XVI. The Southwest Division and the Gulf Coast Division of Sun Oil Company are divisions of the Production Department of the Company, which is under the direction of a Senior Vice President in the Philadelphia office. Other top officials and certain key men in the Production organization are located in Philadelphia, but many of the executives are in offices away from headquarters. Outside Philadelphia the Production Department is comprised of seven divisions (Gulf Coast, Southwest, Mid-Continent, Eastern, Rocky Mt., Canadian, and Latin America) each directed by a manager.

The Southwest Division and the Gulf Coast Division, with headquarters in Texas:

(1) Have authority in hiring and firing personnel [with the exception of top level management personnel], subject to limitations as to salary and number of employees approved by the Philadelphia office;

(2) Have authority to negotiate and execute on behalf of Sun Oil Company, lease and farm-out agreements;

(3) Have authority to enter into, on behalf of the Company, drilling contracts and contracts for seismograph work, well log services, etc.;

(4) Have authority to purchase various types of equipment necessary for use in the field in connection with exploration and production of oil and gas, in accordance with monetary limitations and overall plans developed by the Production Department in Texas and approved in Philadelphia.

Payments for obligations incurred in connection with the activities enumerated above is made by the Southwest Division through bank accounts in Texas

and by the Gulf Coast Division through bank accounts in Texas and, in the case of lease and farm-out agreements on properties in Louisiana, through bank accounts in Louisiana.

Research and Development laboratories are maintained in Richardson and Beaumont, Texas. A Geophysical laboratory is located at Amelia, Texas.

XVII. The property which Defendant Sun Oil Company reported to the Treasurer of Texas as of December 31, 1961 amounts to approximately \$37,853.37 in miscellaneous sums of money owed by Sun Oil Company to between 1,800 and 2,000 different persons whose whereabouts or identity were unknown when the report was made up. Since the filing of the report and within the time allowed, the owners of various items and their whereabouts were ascertained. A schedule was filed removing items totaling \$11,391.72 where the owners had been found, leaving about 1,730 items totalling about \$26,461.65. Subsequently, the owners of certain other items reported to the State of Texas have been ascertained or their whereabouts have become known.

The items reported to the State of Texas include the following:

(1) Unclaimed wages payable to employees for services performed in Texas, Louisiana and Arkansas, for which checks were issued in Texas on bank accounts in Texas by the Gulf Coast Division office of said Company at Beaumont, Jefferson County, Texas, and by the Southwest Division office of said Company at Dallas, Dallas County, Texas, payable to various persons: (a) whose last known address is in Texas; (b) whose last known address is in states other than Texas; and (c) whose address is unknown. The general procedure

of the Company to make payment for wages is by hand delivery of the checks. If hand delivery is not possible, the checks are subsequently mailed to the last known address of the payee, if any address is known. The checks here involved were (a) not delivered, (b) returned unclaimed to the Company, or (c) never presented for payment. Almost all of the persons entitled to the unclaimed wages involved in this action are persons whose employment with the Company terminated at or about the time the wages became due.

(2) Amounts payable for supplies purchased and services rendered in Texas, Louisiana, Arkansas, California and Mississippi, for which checks were issued in Texas on bank accounts in Texas by the Gulf Coast Division office of said Company at Beaumont, Jefferson County, Texas, and by the Southwest Division Office of said Company at Dallas, Dallas County, Texas, payable to various persons: (a) whose last known address is in Texas; (b) whose last known address is in states other than Texas; and (c) whose address is unknown. It is the general procedure of the Company to make payment for supplies and services by the mailing of checks to the last known address of the persons entitled if any address is known. The unclaimed items in this category arose when checks were (a) not delivered, (b) returned to the Company, or (c) never presented for payment.

(3) Amounts payable for employee expenses and other miscellaneous minor fees and charges incurred in Texas and twenty other states, for which checks were issued in Texas on bank accounts in Texas by the Gulf Coast Division office of said Company at Beaumont, Jefferson County, Texas, and by the Southwest Division office of said Company at Dallas, Dallas County, Texas, payable to various persons: (a) whose last

known address is in Texas; (b) whose last known address is in states other than Texas; and (c) whose address is unknown. It is the practice of the Company to make payment for employee expenses and other miscellaneous minor fees and charges by hand delivery of checks. If hand delivery is not possible, checks are mailed to the last known address of the payee if any address is known. As to unclaimed items in this category, the checks were (a) not delivered, (b) returned to the Company, or (c) never presented for payment.

(4) Amounts payable as royalties on gas and oil production from lands in and rental on leases on lands in Texas, Louisiana, New Mexico and Mississippi for which checks were issued in Texas on bank accounts in Texas (and on bank accounts in Louisiana as to some Louisiana production and leases) by the Gulf Coast Division in Texas and on bank accounts in Texas by the Southwest Division, payable to various persons: (a) whose last known address is in Texas; (b) whose last known address is in thirty-one states other than Texas; and (c) whose address is unknown. It is the general procedure of the Company to make payment for royalties on gas and oil production by the mailing of checks to the last known address of the payee if any address is known. The unclaimed items in this category arose when the checks were (a) not delivered, (b) returned to the Company, or (c) never presented for payment.

(5) Mineral proceeds, being fractional mineral interests for which checks have not been issued because of title or other legal requirements preventing payment, reflected by the records of the Gulf Coast Division in Texas and the Southwest Division in Texas on production from land and leases in Texas, Louisiana, New Mexico and Mississippi, and payable to various

persons: (a) whose last known address is in Texas; (b) whose last known address is in twenty-six other states; and (c) whose address is unknown.

(6) Unclaimed cash dividends on the common stock of Sun Oil Company payable to persons whose last known address is in Texas. Such dividends were declared by the Board of Directors in Philadelphia, and funds for their payment were deposited in a special dividend account in a Philadelphia bank on which checks were drawn. After two years, moneys to cover unclaimed dividends were transferred from the special dividend account to a general account of the Company in Philadelphia. It is the practice of the Company to mail checks for cash dividends on its stock to the address of the shareholder shown on the books of the Company. In the event such checks are returned, the change of address records of the Company are carefully checked and other efforts are made to ascertain the present address of the shareholder, including inquiries directed to the office of the Company located nearest the last known address of the shareholder. Where dividend checks are not presented for payment, follow-up letters are sent to the shareholder urging him to negotiate the check which has been sent to him. The foregoing steps were pursued unsuccessfully in respect to the unclaimed cash dividends listed on the report made to the State of Texas identifying shareholders whose last known address is in Texas.

(7) Unclaimed payments for deductions from wages for the purchase of war bonds for employees who were hired in and paid from Pennsylvania who are believed to have worked in Pennsylvania and in other states and whose last known address is in Texas. These claims became payable upon the employee being separated from the Company. The records of the Company do not

now reflect what efforts were made to effect delivery of the items shown in the report to the State of Texas under the category of unclaimed payments deducted from wages for the purchase of war bonds for employees. It is known that the persons entitled thereto are no longer in the employ of the Company.

(8) Uncashed checks issued in Oklahoma by the Mid-Continent Division office of said Company at Tulsa, Oklahoma on bank accounts in Oklahoma to various persons whose last known address is in Texas. The nature of the transactions underlying the issuance of these checks is not presently known.

(9) Unclaimed stock scrip certificates for fractional shares of the Sun Oil Company held in Philadelphia, Pennsylvania for persons whose last known address is in Texas, prepared as a result of stock dividends declared in Philadelphia, Pennsylvania by the Board of Directors. The procedure for delivery of stock scrip certificates for fractional shares of Sun Oil Company stock was to mail such certificates to the address shown on the books of the Company. The certificates in question here were returned undelivered. The change of address records of the Company were checked and other efforts made to ascertain the whereabouts of the shareholders without success.

All Company records of debts incurred by the Gulf Coast and Southwest Divisions were entered in, and have since been kept in, the offices of the Gulf Coast Division of the Southwest Division in Texas.

Bookkeeping entries relating to (6) unclaimed cash dividends on common stock, and (9) unclaimed stock scrip certificates, were made in and have since been kept in the principal executive office of Sun Oil Company in Pennsylvania. The stock scrip certificates were

issued by the Company's transfer agent Chase Manhattan Bank of New York, New York, and were mailed by Sun Oil Company from Philadelphia.

The bulk of items shown on the report to Texas owing to persons whose last known address is in Florida are royalties on production from lands in Texas.

The following statement from the Gulf Coast Division illustrates the manner in which uncashed checks and unclaimed obligations are handled:

From 1908 thru 1939, outstanding checks were recorded in the "Outstanding Check Account." The balance of the account was periodically taken into income and transferred to the Philadelphia office.

Beginning in 1940, outstanding checks were recorded in the "Unclaimed Payment Account." By December 1950, the balance in the "Unclaimed Payment Account" had reached \$2,607.27, when all items four years old (dated 1946 and prior) were taken into income and transferred to Philadelphia.

Since 1950, *except for lease rental checks*, practice has been for the Cashier's Department each December to transfer outstanding checks which are two years old to the "Unclaimed Payment Account." If the checks are not cashed within two more years, the "Unclaimed Payment Account" is debited and income is credited. Thus, checks outstanding are taken into income and transferred to Philadelphia four years after the date of issue.

During the years 1955 thru 1957, outstanding checks (dated in 1953 thru 1955) in amounts over \$50.00 were not put into the "Unclaimed Payment Account." In 1958, these checks over \$50.00 were credited to "Accounts Payable - Unclaimed." (Name change of "Unclaimed Payment Account" with Machinery Accounting in 1956.)

Since 1958, except for rental checks, all checks have been credited to "Accounts Payable-Unclaimed" in December of the year when the checks have been outstanding for two years. When four years old, these outstanding checks are taken into income.

Lease rental outstanding checks, which are an exception to the general practice, when over two years old are discussed with the Lease Rental Department, who in turn get legal advice, by the Cashier's Department to determine if the checks should be left outstanding or transferred to "Accounts Payable—Unclaimed."

A similar statement has been obtained from the Southwest Division as follows:

From 1919 through September 1935, uncashed checks were recorded either as Unclaimed Wages or Unclaimed Checks. In September, 1935, these two accounts were consolidated as one account as Unclaimed Payment Account. At various times uncashed checks were placed in this Account and on June 30, 1949, all checks entered in this account prior to June 30, 1945, were transferred to Miscellaneous Income.

Beginning in July, 1949, all outstanding checks for the previous year, except for lease rental checks, are reviewed and transferred to the Unclaimed Payment Account. In July 1949 through December 1953, checks that had been held in the Unclaimed Payment Account for four years were transferred semi-annually to Miscellaneous Income. After December, 1954, checks held in the Unclaimed Payment Account for a period of four years are transferred annually to Miscellaneous Income.

Annually, the Title Record Department is requested to review all outstanding Lease Rental checks and specify which checks should be transferred to the Unclaimed Payment Account. Rental

checks are transferred to the Unclaimed Payment Account only after the lease has been cancelled. Once in the Unclaimed Payment Account, the Rental Check is handled the same as all other uncashed checks.

Every effort, through various means such as personal contact or letter, is made to clear these uncashed checks before being transferred to the Unclaimed Payment Account.

In 1955, the account "Unclaimed Payment" was changed to "Accounts Payable—Unclaimed." Accounting procedures remained unchanged.

Where debts are incurred by Sun Oil Company through production divisions, such as the Gulf Coast and Southwest Divisions, operating independently of the principal executive officers and are unclaimed, the result is to increase the operating income reported by the Division to the Home Office. In the event a creditor is found and paid or payment is made of an unclaimed debt to a state under an abandoned property or escheat law, the particular division which incurred the debt originally is charged with the payment. Once an item has been transferred to an unclaimed account, no special bank account is maintained to meet the obligations of the Company, and all items reported to the State of Texas are unsecured and are not now represented by any particular funds, accounts or property earmarked or otherwise set apart or identified for their particular payment.

The items reported to the State of Texas fall into three general classifications:

- (1) Debts for which checks were issued but which were never delivered to the payee and were returned to the Company;

- (2) Debts for which checks were issued which were

not returned to the Company or presented for payment;

(3) Debts reflected on the records of the Company for which checks have not been issued.

XVIII. Over the past ten years Sun Oil Company has filed reports of unclaimed property with fifteen States: Arizona, California, Connecticut, Florida, Idaho, Illinois, Kentucky, Massachusetts, Michigan, New Jersey, Oregon, Texas, Utah, Virginia and Washington. Payments have actually been made to four States: Kentucky (\$55.28), Massachusetts (\$2.00), Michigan (\$989.91), and New Jersey (\$17,341.97).

The Commonwealth of Pennsylvania has asserted a broad claim to allegedly escheatable funds in the possession of Sun Oil Company. Sun Pipeline Company, a wholly owned subsidiary of Sun Oil Company, incorporated in Pennsylvania, has filed reports of escheatable property with Pennsylvania.

The Company's books presently disclosed that unclaimed dividends are owing to persons whose last known addresses are in nineteen States and Canada. The Company has stockholders whose addresses include fifty States, the District of Columbia, Canada and twenty-six other countries.

SUMMARY OF ARGUMENT

The claims of the party states, under their escheat laws, are asserted against certain obligations owed by Sun Oil Company to various persons with last known addresses in the party states and other states. These obligations fall into that category normally referred to in legal terms as intangibles.

Often in the past, courts in dealing with intangible

obligations of this nature, have resorted to the process of declaring that they have a *situs* with the debtor or creditor, or both. This is, of course, a fiction for it is everywhere recognized that a debt has no existence as such and that the power of a court to deal with a debt lies in its jurisdiction over the debtor and creditor.

Since the power of a court to deal with an intangible obligation is predicated upon jurisdiction over the debtor and creditor, and, in the present controversy, each of the states may acquire such jurisdiction, any attempt to resolve these conflicting claims through the fictional process of declaring that these intangibles have a *situs* with either the debtor or creditor merely leads us further into the wilderness.

It is submitted that the proper solution to this controversy is to be found, not in fiction, but in the body of legal authorities designated as conflict of laws.

A. ROYALTY, MINERAL PROCEEDS AND DELAY RENTAL DERIVED FROM TEXAS LAND ARE SUBJECT ONLY TO TEXAS ESCHEAT LAWS

Royalty interests, mineral interests and the right to receive delay rentals are characterized as real property interests by the Texas courts. This classification is binding on other states, and under the principles of conflict of laws the transfer and disposition of such interests must conform to Texas law. Judgments of other states affecting title to property classed as real by the State of Texas are not entitled to full faith and credit.

No other state could enter a judgment escheating property classed as real by Texas courts. Consequently, no state could enter a judgment escheating a roy-

alty interest, mineral interest or right to receive delay rental relative to Texas land. Failing in this, how can it be said that because the obligations with which we are concerned are the proceeds from the sale of production obtained from the mineral estate and royalty estate, or else are delay rentals for the privilege of continuing in effect an oil and gas lease, that a state other than Texas can escheat such obligations and thereby reap the full benefits of ownership of the real property interest itself, accomplishing by indirection that which could not be accomplished directly.

The statute under which Texas asserts its claim in this case specifically refers to "... production and proceeds from oil, gas and other mineral estates. ...". It is our contention that these obligations are so related to the ownership and enjoyment of the real property from which they are derived that only Texas law can apply to the disposition of such obligations when unclaimed by the owner.

B. INTANGIBLE OBLIGATIONS ARE SUBJECT TO THE ESCHEAT LAWS OF THE STATE WITH MOST SIGNIFICANT CONTACT WITH TRANSACTIONS INVOLVED

The conflicting claims of the party states to these obligations have evolved because of the interstate character of the transactions out of which the obligations arose. New Jersey is the state of domicile of the debtor company, Pennsylvania is the state wherein the company's executive offices are maintained, Texas is the state wherein are located the division offices through which the transactions and activities were conducted which gave rise to a majority of these obligations, Florida is the state of last known address of some of the persons to whom these obligations are owed, as are

the other party states and states not party to this action.

It is our contention that the controversy presented cannot be resolved by resort to fiction but must be solved by a consideration of the actual facts of the transactions which gave rise to these obligations as they relate to the claiming states. This process embodies the conflict of laws theory which has been variously termed as the "points of contact," "grouping of contact" or "center of gravity" theory. It resolves choice of law questions in favor of the state which has the most significant contacts with the matter in dispute. The rule has been concisely stated in *W. H. Barber Co. v. Hughes*, 223 Ind. 570, 63 N.E.2d 417, 423 (1945), as follows:

"The court will consider all acts of the parties touching the transactions in relation to the several states involved and will apply as the law governing the transaction the law of that state with which the facts are in most intimate contact."

This approach to conflict of laws problems has gained popularity since its formulation by the Indiana Court and has been stated to be the unannounced process by which many courts in cases decided prior to that time have reached their decision as to choice of laws. It is submitted that this approach to the problem at hand, by taking into consideration the various contacts and interests of the states concerned with the transactions, leads toward a solution which balances the interests and equities of all concerned and reaches a choice of law which comports with reality rather than fiction.

ARGUMENT

Statement

The recommendations and opinion of the Special Master are based upon the conclusion that an intangible obligation has a fixed and finite *situs* at the domicile of the creditor by virtue of the principle of "*mobilia sequuntur personam*." By equating domicile with last known address, the Special Master concludes that intangible obligations have an exclusive *situs* within the state of last known address of the creditor and that such state has exclusive jurisdiction to escheat such intangibles. According to the Report of the Special Master, this rule is to be applied without regard to any other facts which are known about the transactions involved in the creation of the intangible obligation. It may well be that where there are no salient facts known regarding the transactions which created a particular intangible obligation the last known address of the creditor should be the controlling factor in resolving conflicting claims of two or more states under their escheat statutes. However, equity and justice to the parties here involved requires that where concrete facts regarding the creation of intangible obligations are known, that such facts be not completely ignored by the resort to an obvious fiction in an effort to enunciate a simple and expedient formula as a panacea for the problem of multi-state escheat claims.

Where facts other than the last known address of the creditor are known, the error of the rule proposed by the Special Master becomes patent in its very statement: the simple fact that the creditor is not at his last known address has created the situation which places us before this Court, yet the Special Master would have us use as the sole determining factor in

this controversy the one single fact which we know to be unreliable.

The Special Master has further concluded that in those instances where no last known address is available for the creditors to whom the intangibles are due, the State of New Jersey is entitled to take such items under its so-called custodial statutes. No reason for the choice of New Jersey is given by the Special Master and we are at loss to explain such choice. If the criteria lies in the Special Master's statement that New Jersey has in effect a statute of the "custodial type" rather than of pure escheat, then the State of Texas, the State of Florida, and the State of Pennsylvania have equal, if not better, claims to these items. Persons may claim refunds from the State of New Jersey only so long as it is done within a seven (7) year period from the date of judgment (See Title 2A, Section 37-40, New Jersey Statutes, 1951); while under the statutes of the State of Texas (Sections 6 & 7, Article 3272a, Revised Civil Statutes of Texas, Vernon 1948), the State of Florida (Sections 717.20 & 717.21, Florida Statutes), and the state of Pennsylvania (Chapter 6, Section 443, Pennsylvania Statutes Annotated) there is no limitation upon the time within which the rightful owner of property taken under such statutes may claim and receive refund of his property. Under these circumstances the decision of the Special Master would yield these items of property to the state with the statute that is only semi-custodial rather than purely of a custodial nature. Consequently, the apparent reason of the Special Master for choosing the State of New Jersey as the state entitled to take those items with unknown address is wholly without basis and, in view of the above referred to provision of the statutes of the other parties to this controversy, completely arbitrary.

I.

Intangible Obligations Have No Fixed Situs: Therefore, When Two Or More States As- sert Claims To The Same Intangibles Under Their Escheat Statutes, The Ultimate Rights Of The States Must Be Resolved By The Principles Of Conflict Of Laws

The property with which we are here concerned, being in the nature of debts or obligations owed by Sun Oil Company to various persons, falls within that category commonly characterized by the courts as intangible property.

Four states are parties to this controversy. Each state contends that some or all of the same specific unclaimed obligations, owed by Sun Oil Company to these various persons, are subject to escheat under their respective statutes; each state has potential jurisdiction over Sun Oil Company and the persons to whom the obligations are owed.

It is respectfully submitted that the conflicting claims of the parties to this controversy cannot, in equity and justice, be resolved by designating a fixed *situs* for these intangible obligations at the domicile of either the debtor or creditor. A debt, as such, has no existence other than as a relationship between the debtor and creditor and as a consequence it cannot have a fixed *situs* anywhere.

"The true doctrine would seem to be that a debt has in fact no situs anywhere; not merely because it is intangible but because as a mere forced relation between the parties it has no real existence anywhere. Like other such relations it may, of course, be controlled by the law, and by the courts as instruments of the law; but control must be obtained by making use of the relation. In order

to control the relation the court must have the power to control both parties to it. Any court which has both debtor and creditor may compel a release from the creditor and an assignment of the action of the creditor." J. H. Beale, *The Exercise of Jurisdiction in Rem to Compel Payment of a Debt*, 27 Harv. L. Rev. 107, 115-116 (1913).

"All debts are payable everywhere, unless there be some special limitation or provision in respect to the payment; the rule being that debts as such have no *locus* or *situs*, but accompany the creditor everywhere, and authorize a demand upon the debtor everywhere." *Chicago, Rock Island & Pacific Railway Company v. Strum*, 174 U.S. 710, 716-717, 19 S. Ct. 797, 43 L.Ed 1144 (1898); *Harris v. Balk*, 198 U.S. 215, 225, 25 S.Ct. 625, 49 L.Ed 1023 (1904).

The power of a court to effectively deal with intangible obligations is founded upon its jurisdiction over the debtor and creditor. *Security Savings Bank v. California*, 263 U.S. 282, 287, 44 S.Ct. 108, 68 L.Ed. 301 (1923); *Estin v. Estin*, 334 U.S. 541, 548, 68 S.Ct. 260, 92 L.Ed. 412 (1947); *Standard Oil Company v. New Jersey*, 341 U.S. 428, 439-441, 71 S.Ct. 822, 95 L.Ed. 1078 (1951). The question of domicile of the creditor and debtor has nothing to do with the determination of the power of a given court to effect the obligation which exists between them: such power rests upon jurisdiction over the debtor and creditor and neither need be domiciled within the jurisdiction of the court. *Harris v. Balk*, 198 U.S. 215, 226, 25 S.Ct. 625, 49 L.Ed. 1023 (1904).

By personal service on the bank and the posting or publication of notice to the owners of unclaimed deposits held by the bank, a state has the power to escheat such deposits without regard to the fact that the last known addresses of the depositors may be outside the

escheating state. *Provident Savings Institute v. Malone*, 221 U.S. 660, 31 S.Ct. 661, 55 L.Ed. 899 (1911); *Security Savings Bank v. California*, 263 U.S. 282, 44 S.Ct. 108, 68 L.Ed. 301 (1923); *Anderson National Bank v. Lockett*, 321 U.S. 233, 64 S.Ct. 496, 88 L.Ed. 684 (1944). Where a foreign insurance company, licensed to do business in the State of New York, issued policies for delivery in New York to persons whose last known address was in New York and who were either the insured or the beneficiary of the policy issued by the company, the power of New York to take the unclaimed proceeds of such policies under its abandoned property laws was upheld. *Connecticut Mutual Life Insurance Company v. Moore*, 333 U.S. 541, 68 S.Ct. 682, 92 L.Ed. 863 (1948). The state under whose laws a corporation is chartered has the power to escheat unclaimed stock and dividends held by such corporation for persons whose last known addresses are outside the escheating state. *Standard Oil Company v. New Jersey*, 341 U.S. 428, 71 S.Ct. 822, 95 L.Ed. 1078 (1951). Unclaimed funds held by a Federal District Court in its registry and later transferred to the Treasury of the United States are subject to the escheat laws of the state where the Federal District Court is located, without regard to the last known address of the creditors to whom such funds are owed. *United States v. Klein*, 303 U.S. 276, 58 S.Ct. 536, 82 L.Ed. 840 (1938). The asserted power of the state courts in each of the foregoing cases was recognized and upheld by this Court because of the jurisdiction over the debtor and creditor, not because of a determination that the intangibles involved had a *situs* within the escheating state by virtue of the domicile of the creditor or otherwise.

In the last three cited cases, the Court specifically

pointed out that there was no claim asserted to the obligations by another state (or the United States in the *Klein* case) and that the problem which such a situation would present was not passed upon. These statements by the Court constituted a tacit recognition, subsequently expressed in *Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71, 82 S.Ct. 199, 7 L.Ed.2d 139 (1961), that more than one state could, by its jurisdiction over the debtor and creditor, assert the power to affect the same intangibles by its escheat laws. The Court in the *Western Union* case declared that when a debtor is subject to the jurisdiction of two or more states and state A and state B assert claims under their escheat statutes to the same intangible obligations, state A cannot enter a judgment which protects the debtor from the claim of state B since state A could not bring state B within the jurisdiction of its courts. The Court further held that under such circumstance the debtor was in danger of being deprived of its property without due process and as a consequence the only way to protect the debtor is for the claiming states to invoke the original jurisdiction of the Supreme Court of the United States over controversies between states.

When we consider the diverse circumstances under which this Court has upheld the power of a single state to take intangible obligations under its escheat statutes, it becomes apparent that although an intangible obligation constitutes a *res* which may be subjected to the jurisdiction of a state court through jurisdiction of the debtor and creditor, the *res* (intangible obligation) has no *situs*. This rationale is the foundation upon which the decision in *Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71, 82 S.Ct. 199, 7 L.Ed. 2d 139 (1961), is predicated.

Having demonstrated that the claims of the parties to this controversy are not to be resolved by attributing to the intangibles involved a fictional *situs* within the state of last known address of the creditor, it is our contention that the question of which state law is to govern the escheat of these intangibles must be answered by application of the rules relating to conflict of laws.

II.

Royalties, Rentals And Mineral Proceeds Derived From Land Located Within The State Of Texas Are Subject Only To The Escheat Laws of Texas

A portion of the obligations reported to the State of Texas by Sun Oil Company consist of amounts payable as royalties, rentals and mineral proceeds derived from oil and gas leases on Texas lands. They are payable to persons whose last known address is (a) in Texas, (b) in other states and (c) unknown. It is our contention that these obligations are exclusively subject to the escheat laws of the State of Texas, regardless of the last known address of the creditor.

Under the decisions of the Texas Courts, oil and gas in place are characterized as minerals, and regarded as real property. *Stephens County v. Mid-Kansas Oil & Gas Co.*, 113 Tex. 160, 254 S.W. 290 (1923); *Sheffield v. Hogg*, 124 Tex. 290, 77 S.W.2d 1021 (1934). As such, conveyances of oil and gas in place must conform to the rules and statutes relating to conveyances of real property in general. *Sheffield v. Hogg*, *supra*; *Smith v. Sorelle*, 126 Tex. 353, 87 S.W.2d 703 (1935).¹

¹For discussion of Texas law relating generally to this subject, together with citation to authorities, see 42 Tex. Jur. 2d, Oil and Gas, §§ 7, 8, 60, 61, 62, 63.

Perhaps the most succinct statement of the Texas law relating to the nature of an oil and gas lease is found in 42 Texas Jurisprudence 2d, Oil and Gas, Section 98, page 226:

"An oil and gas lease is not a mere franchise or privilege to devote the land to a certain use, with usufructuary right, as part of its use and enjoyment, to appropriate a portion of the oil and gas that may be discovered, and the lease itself may so provide. The lease is a sale and conveyance of the oil and gas in place in the premises described therein, and operates as a severance of the mineral estate from the surface. Such a lease is not a lease in the ordinary sense of the term, and does not create the relationship of landlord and tenant. It operates not as a lease but as a deed or conveyance of a determinable fee simple estate, subject to one or more special limitations, the happening of which will terminate the estate automatically. . . ."

The royalty interest retained by the lessor under an oil and gas lease is part of the consideration for the conveyance of the determinable fee in the minerals to the lessee. It is a reservation of the grant of the minerals in place entitling the lessor to a portion of the oil or gas, if discovered, and when produced, free of the cost of production. This royalty interest is an interest in real property, taxable as such in the county where located. *Waggoner Estate v. Wichita County*, 273 U.S. 113, 47 S.Ct. 271, 71 L.Ed. 566 (1926); *Sheffield v. Hogg*, 124 Tex. 290, 77 S.W.2d 1021 (1934); *Tennant v. Dunn*, 130 Tex. 285, 110 S.W.2d 53 (1937); *Veal v. Thomason*, 138 Tex. 341, 159 S.W.2d 472 (1942).

Rental under an oil and gas lease is concisely characterized in 42 Texas Jurisprudence 2d, Oil and Gas, Section 216, pages 464-465, as follows:

"Oil and gas leases usually give the lessee an

option to drill or to pay delay rental, either by way of a provision obligating him to drill 'or' pay rental, or by way of a requirement that he pay rental 'unless' he drills.

" . . .

"The provisions for payment of delay rentals are designed to enable a lessee, who, for one reason or another, finds it undesirable to begin drilling on the agreed date to avert a forfeiture, and retain his rights by paying periodical rentals for the privilege of deferring operations."

Delay rentals may be conveyed by deed. *Olvey v. Jones*, 95 S.W.2d 980 (Tex.Civ.App. 1936, error dism. w.o.j.). Upon the conveyance of the reversion in fee created by an oil and gas lease the grantee is entitled to subsequent accruing delay rentals unless the grantor expressly reserves them to himself. *Walker v. Ames*, 229 S.W. 265 (Tex.Civ.App. 1921, error dism.). Since delay rentals, like royalty interests, are the subject of conveyance and follow the reversionary interest in fee, they are interests in real property. See *Sheffield v. Hogg*, 124 Tex. 290, 77 S.W.2d 1021 (1934); *Hoffman v. Magnolia Petroleum Co.*, 273 S.W. 828 (Tex. Comm.App. 1925); *Young v. Rudd*, 226 S.W.2d 469 (Tex.Civ.App. 1950, error ref. n.r.e.).

The term mineral proceeds, as used in the Sun Oil Company report of property subject to escheat filed with the State of Texas, has reference to sums payable to the owner of an interest in the mineral estate who has not joined in the oil and gas lease covering a particular tract upon which production has been obtained. Oil and gas, as we have pointed out above, are classified as minerals and as such, are capable of severance and ownership separate and apart from the surface estate. *Stephens County v. Mid-Kansas Oil & Gas Co.*, 113

Tex. 160, 254 S.W. 290 (1923). In many instances the mineral estate may be owned jointly by different persons, and, in such instances, the owners of such undivided estates are tenants in common and the lessee of a cotenant becomes the cotenant of those cotenants of his lessor who have not joined in the lease. *Willson v. Superior Oil Co.*, 274 S.W.2d 947 (Tex.Civ.App. 1954, error ref. n.r.e.). Under these circumstances, the lessee, in the event that production is obtained, must account to his cotenants in the mineral estate. However, in making such accounting he is entitled to deduct the costs of production and marketing. *Stroud v. Guffey*, 3 S.W.2d 592 (Tex.Civ.App. 1927); *Shaw & Estes v. Texas Consolidated Oils*, 299 S.W.2d 307 (Tex.Civ.App. 1957); *Rosse v. Northern Pump Co.*, 353 S.W.2d 287 (Tex.Civ.App. 1962, error ref. n.r.e.).

The foregoing discussion of the case law of Texas clearly demonstrates that the ownership of royalty, minerals and the right to rental under an oil and gas lease are interests in real property. The characterization of such property interests by the Texas courts is conclusive in all jurisdictions. *Clarke v. Clarke*, 178 U.S. 186, 20 S.Ct. 873, 44 L.Ed. 1028 (1900); *Wagoner Estate v. Wichita County*, 273 U.S. 113, 47 S.Ct. 271, 71 L.Ed. 566 (1926); *Commissioner of Internal Revenue v. Skaggs*, 122 F.2d 721 (5th Cir. 1941), cert. denied, 315 U.S. 811, 62 S.Ct. 796, 86 L.Ed. 1210 (1942); *Carmichal v. United States*, 273 F.2d 392 (5th Cir. 1960). Thus characterized, the title to, and the disposition and transfer of, royalty interests, mineral interests and the right to receive delay rentals, in relation to Texas land, is to be determined exclusively by the law of Texas. *Carroll v. Safford*, 3 How. 441, 11 L.Ed. 671 (1844); *Langdon v. Sherwood*, 124 U.S. 74, 8 S.Ct. 429, 31 L.Ed. 344 (1888); *Clarke v. Clarke*,

178 U.S. 186, 20 S.Ct. 873, 44 L.Ed. 1028 (1900); *Blythe v. Hinckley*, 180 U.S. 333, 21 S.Ct. 292, 54 L.Ed. 530 (1901); *Greer County v. Texas*, 197 U.S. 235, 25 S.Ct. 437, 49 L.Ed. 736 (1904); *Olmsted v. Olmsted*, 216 U.S. 386, 30 S.Ct. 292, 54 L.Ed. 530 (1910). Any judgment rendered by the courts of a foreign jurisdiction which directly affect title to property characterized as real by Texas law would not be entitled to full faith and credit. *Carpenter v. Strange*, 141 U.S. 87, 11 S.Ct. 960, 35 L.Ed. 640 (1891); *Fall v. Estin*, 215 U.S. 1, 30 S.Ct. 7, 54 L.Ed. 70 (1909); *Tolley v. Tolley*, 210 Ark. 144, 194 S.W.2d 687 (1946); *West v. West*, 268 P.2d 250 (1954).

The obligations in this category are: in the case of royalty and mineral interests, proceeds from the sale of real property, and in the case of delay rentals, payments to prevent reversion of a determinable fee in real property. As such, the proceeds themselves would commonly be personalty and not real property. However, they are so affected with the title and enjoyment of the realty itself that their devolution, transfer and title is subject only to the law of Texas. See *Toledo Society For Crippled Children v. Hickok*, 152 Tex. 578, 261 S.W.2d 692 (1953), cert. denied, 347 U.S. 936, 74 S.Ct. 631, 98 L.Ed. 1086 (1954); *Commissioner of Internal Revenue v. Skaggs*, 122 F.2d 721 (5th Cir. 1941), cert. denied, 315 U.S. 811, 62 S.Ct. 796, 86 L.Ed. 1210 (1942); *Hammonds v. Commissioner*, 106 F.2d 420 (10th Cir. 1939).

In *Toledo Society for Crippled Children v. Hickok*, *supra*, one Hickok, who was domiciled in Ohio, at his death left a will whereby certain property was left in trust, the income to be paid to the widow and children for a period of 20 years. Thereafter, the corpus of the trust was to be divided among certain charitable or-

ganizations including the Toledo Society For Crippled Children (hereafter referred to as The Society). The powers of the trustee included a general power of sale of the property of the trust. Included in the trust property was a partnership interest in certain mineral interests in Texas lands and the will specifically directed that the exchange of the partnership assets for corporate shares of Hickok and Reynolds, Inc., an Ohio corporation formed pursuant to a contract between Hickok and his partner Reynolds prior to Hickok's death, be carried out. The exchange was made after the death of Hickok. Hickok's heirs contended, and the Supreme Court of Ohio, so held, that an equitable conversion of Hickok's interest in the Texas minerals had occurred, that as a consequence the validity of the devise to The Society was governed by Ohio law and that under Ohio law the devise to The Society was invalid. The Society brought this action in Texas to establish their rights in the Texas realty. In the course of its opinion the Supreme Court of Texas held: (1) that mineral interests are land under Texas law (261 S.W.2d 692, 694); (2) that the validity of a devise of Texas land is to be determined by Texas law (261 S.W.2d 692, 696); (3) that the judgment of the Court which applies to land a law different from that of the state wherein the land is located is not entitled to full faith and credit (261 S.W.2d 692, 697); (4) that "the fiction of equitable conversion from realty to personalty or vice versa 'can have no place in the Conflict of Laws.' . . . Thus to use as a basis for selection of a particular law, between conflicting laws, a doctrine which may not even exist in some jurisdictions is obviously less desirable than a more realistic basis such as the movable or immovable character of the object in question." (261 S.W.2d 692, 701); (5) that the devise of the remainder to The Society was a devise of an inter-

est in Texas land and, there being no Texas Statute similar to the Ohio Statute, such devise was valid and effective (261 S.W.2d 692, 702-703).

It is admitted that *Toledo Society For Crippled Children* is not precisely in point since at the time of Hickok's death the exchange of assets had not actually taken place, yet there was a contract in existence which called for such exchange and the will specifically directed such exchange. It is extremely significant to note that the Supreme Court of Texas specifically acknowledged that the doctrine of equitable conversion is recognized in Texas (261 S.W.2d 692, 698), yet by holding that such doctrine has no place in conflict of laws questions, the application of this doctrine is limited by this holding to cases of an internal character.

The refusal of the Supreme Court of Texas to apply the doctrine of equitable conversion in a conflict of laws situation in *Toledo Society For Crippled Children* has, it is submitted, an important bearing on whether, in view of the very nature of the obligations owed for the proceeds of the sale of Texas realty, (royalty and mineral proceeds) and delay rental (payments to forestall reversion of a determinable fee), the Texas courts would hold that, although these proceeds are personalty, they are so affected with a real property interest that they are subject only to Texas law. See *Hammonds v. Commissioner*, 106 F.2d 420 (10th Cir. 1939); *Commissioner v. Skaggs*, 122 F.2d 721 (5th Cir. 1941), cert. denied, 315 U.S. 811, 62 S.Ct. 796, 8 L.Ed. 1210 (1942).

We submit that they would so hold for the following reasons: (1) these obligations inhere in, and are derived from, real property interests; (2) the right to receive these obligations follow the title to real prop-

erty interests, which title is subject to transfer and establishment only in accordance with Texas law; (3) being the direct proceeds of estates classified as real, these obligations constitute the sole benefits and enjoyment of ownership of the estate itself. Section 1(b) of Article 3272a, Revised Civil Statutes of Texas (Vernon 1948) in defining the class of property which is subject to being reported and escheated specifically includes in such category "... production and proceeds from oil, gas and other mineral estates, ..." This constitutes a positive declaration by the Texas Legislature that the unclaimed proceeds derived from oil, gas and other mineral estates, being the proceeds of real property, are subject only to the laws of the State of Texas. If it be conceded, as we think it must, that the escheat laws of one state could not be given force, by judgment or otherwise, to escheat to that state land or real property located within another state, then taking into consideration the factors just mentioned, if the escheat laws of another state are allowed to apply to the obligations in question it would be to allow the accomplishment by indirection that which could not be accomplished directly, for the real property interest itself has no value without the benefit of the proceeds derived from it. The courts of our nation have never been prone to allow by indirection the accomplishment of that which cannot be done directly. Yet this is exactly what will happen if any state other than Texas is allowed to escheat the proceeds which are derived from these real property interests. These proceeds constitute the full and complete enjoyment of the title to a real property interest and the right to receive these proceeds is dependent upon title as determined under Texas law. It is a continuing right in the titleholder. If other states can effectively take such proceeds under the guise of their escheat statutes, then such states, by reaping the

full benefits of title to the real property interest, have, for all practical purposes, effected title to the real property interest from which they are derived.

One case which follows the reasoning which we propose is *Commissioner of Internal Revenue v. Skaggs*, 122 F.2d 721, (5th Cir. 1941), cert. denied, 315 U.S. 811, 62 S.Ct. 796, 86 L.Ed. 1210 (1942). In determining whether, for income tax purposes, rents from real property located in California were to be characterized under California law or Texas law, where the taxpayer and his wife were domiciled in Texas, the court held that the nature of the rents were characterized by the law of California, where the real property was located, rather than Texas, the Court, at page 723, states:

"Marriage is a very personal matter, and its incidents are in general regulated by the law of the matrimonial domicile. But the Spanish and French laws touching community property, and those of California and Texas and other States derived from them, are held to be, in the vocabulary of civilians, statutes real and not statutes personal; that is to say, they apply to things within a country's jurisdiction rather than to persons wherever they may be or go. *Hammonds v. Commissioner*, 10 Cir., 106 F.2d 420. It should follow that things, whether movable or immovable, actually situate in a State and effectively within its power, should be governed by the law of that State. It is universally held that real or immovable property is exclusively subject to the law of the country or State in which it is situated, and no interference with it by the law of any other sovereignty is permitted. 11 Am. Jur., Conflict of Laws, § 30. And the question whether property is real or personal is to be solved by the law of the place where it is actually located. *Id.*, § 29. These rules apply to questions of the marital rights of spouses in property. 11 Am. Jur., Conflict of Laws, Sects. 50, 85;

I.D., Community Property §§ 10, 11. The Board in this case recognized that the California land was subject to California law only, and that the rents from it prior to accrual were a part of the land, but thought that after accrual the rents were mere choses in action having no actual situs and would take a fictional situs at the domicile of Skaggs for tax purposes, and thus fall under the Texas law and become the property of himself and wife. We think the reasoning too artificial and tenuous. *The receipt of the rents, issues or profits of land constitutes its enjoyment. A deed or devise of the income from property gives a corresponding right in the property itself.* Commissioner v. Terry, 5 Cir., 69 F.2d 969; Irvin v. Gavit, 268 U.S. 161, 45 S.Ct. 475, 69 L.Ed. 897. *If the Texas community law can transfer to Skaggs' wife a half interest in the rents and profits of his land in California, it in effect gives her a half interest in the land for the period of the marriage. An immature crop, like unaccrued rent, is a part of the land; and it becomes personalty when gathered—just as rent past due does—no longer passing with the land as part of it; but we think in neither case would the law of another State be effective to change the ownership of the crop on its gathering, or of the rent on its becoming due.* In Robinson's Succession, 23 La. Ann. 174, the marital community of a Louisiana couple sought to have the husband's separate estate account for cotton raised on his separately owned farm in Mississippi. It was held the cotton was separate property. In the Hammonds case, supra, a wife whose earnings were her own at her domicile in Oklahoma, received for her services an interest in an oil lease in Texas, which she converted into money and an oil payment. The oil lease was realty in Texas, and what came out of it, cash and oil, was held governed for federal tax purposes by the Texas community law and not by the law of her domicile. The rent on this California land was certainly the

property of Skaggs at the moment it became due. We do not think the Texas law, being a statute real, operates to change the ownership instantly afterwards." (Empasis added)

It is therefore submitted that the proceeds derived from the sale of royalty production or mineral production from Texas realty, and delay rentals due under oil and gas leases on Texas realty, inhere in the real property interest from which they derive, and the positive declaration of the Texas Legislature that such property shall be subject to escheat under Texas statutes is a statement of policy concerning the title and enjoyment of a real property interest. Therefore, the laws of no other state, declaring a policy to the contrary, can be allowed to prevail over the local policy of the State of Texas, even though the last known address of the owner may be outside the State of Texas.

III.

Multiple Escheat Claims To The Same Intangible Obligations Are To Be Resolved By The Points Of Contact Theory Of Conflict of Laws

As we have stated in our argument above, it is our contention that the question of which of the party states has the right to apply its respective escheat laws to the obligations held by Sun Oil Company must be resolved, not by resort to the fiction of assigning a fixed *situs* to something which from its very nature has none, but by established principles of conflict of laws.

The solution to the problem of which law to apply to obligations which are interstate in character is not without its difficulties. This fact was pointed out by

Mr. Justice Black in the case of *Vanston Bondholders Protection Committee v. Green*, 329 U.S. 156, 67 S.Ct. 237, 91 L.Ed. 163 (1946), in language at 329 U.S. 161-162 which, although unnecessary to the holding in the case, has significance in relation to the problem presented in this case.

"But obligations, such as the one here for interest, often have significant contacts in many states, so that the question of which particular state's law should measure the obligations seldom lends itself to simple solution. In determining which contact is the most significant in a particular transaction, courts can seldom find a complete solution in the mechanical formulae of the conflicts of law. Determination requires the exercise of an informed judgment in the balancing of all the interest of the states with the most significant contacts in order best to accommodate the equities among the parties to the policies of those states. Certainly the part of this transaction which touched New York, namely, that the indenture contract was written, signed, and payable there, may be a reason why that state's law should govern. But apparently the bonds were sold to people all over the nation, and Kentucky's interest in having its own laws govern the obligation cannot be minimized. For the property mortgaged was there; the company's business was chiefly there; its products were widely distributed there; and the prices paid by Kentuckians for those products would depend, at least to some extent, on the stability of the company as affected by the carrying charges on its debts. But we do not need to decide which, if either, of these two states' laws govern. . . ."

Although, as we have just stated, the above quoted language from the *Vanston Bondholders* case was not necessary to the decision reached, it is, nonetheless, a concrete statement by this Court of the principles underlying a theory in the field of conflict of laws which

is known as the "points of contact," "grouping of contacts" or "center of gravity" theory.¹

This theory, at least as so named, was first announced by the Supreme Court of Indiana in the case of *W. H. Barber Co. v. Hughes*, 223 Ind. 570, 63 N.E.2d 417 (1945), at 63 N.E.2d 423:

"In view of the unsatisfactory state of the decisions, both in Indiana and other jurisdictions, and as a test of the correctness of our conclusion that the validity of the note and its cognovit clause must be determined by the law of Illinois, we resort to a method used by modern teachers of Conflict of Laws in rationalizing the results obtained by the courts in decided cases. So far as we know it has not been formulated by any court into a rule, but if one were attempted it might be stated as follows: *The Court will consider all acts of the parties touching the transaction in relation to the several states involved and will apply as the law governing the transaction the law of that state with which the facts are in most intimate contact.*

Two casebooks in common use in the law schools are *Cases on Conflict of Laws—Cheatham Dowling Goodrich Griswold* (2nd ed.) (1941) and *Cases on Conflict of Laws, Harper and Taintor* (1937). The former is the result of collaboration of one Harvard and two Columbia professors and Judge, formerly Dean, Goodrich of Pennsylvania. The other book was prepared by Professor Harper of Indiana and Professor Taintor of Nebraska. In the former are several references to this method. See pages 478, 511 and 411. In the latter the subject is elaborated in an introductory statement to § 6 at pp. 173 and 175, as follows:

"Many courts purport to find the most signifi-

¹For comprehensive articles on this theory, see: *Points of Contact Theory in the Conflict of Laws*, 34 Texas L. Rev. 114 (1955); *Conflict of Laws: Center of Gravity Theory Applied to Contracts*, 40 Cornell L.Q. 772 (1955).

cant contact point with respect to contractual transactions, at the place intended by both parties. It seems, rather, that these courts examine all the circumstances which could be supposed to have influenced the actions of the parties and find the most intimate contact at that place which might be characterized as the center of gravity of the circumstances.

“There is evident benefit in taking this accumulation of contact points as paramount, since then many difficult questions with respect to the identification of the place of contracting or the place of performance will be avoided; and, furthermore, this result harmonizes with a sense of appropriateness: that is to say, it is appropriate that a transaction be governed by the law of the state with which it is most closely in contact, not because of the quasi-localization of a legal concept—place of contracting, place of performance, intention of the parties—but because of the closeness of factual contacts between that state and the significant acts of the parties.’

“Following this introductory note the authors have gathered cases, which upon examination disclose that the several courts, without consciously following a rule such as we have attempted to formulate, have considered and appraised the contact points and in the several decisions applied the law of the state with which the transaction was found to be the most closely associated.” (Emphasis added)

Another leading case in this area is *Auten v. Auten*, 308 N.Y. 155, 124 N.E.2d 99 (1954), where the New York Court of Appeals announced and applied the theory, describing it as the “grouping of contacts” or “center of gravity” theory. The Court at 124 N.E.2d 101-102 discusses the problem and states the theory in the following language:

"Choosing the law to be applied to a contractual transaction with elements in different jurisdictions is a matter not free from difficulty. The New York decisions evidence a number of different approaches to the question. See, e.g., *Jones v. Metropolitan Life Ins. Co.*, 158 Misc. 466, 286 N.Y.S. 4.

"Most of the cases rely upon the generally accepted rules that 'All matters bearing upon the execution, the interpretation and the validity of contracts * * * are determined by the law of the place where the contract is made,' while 'all matters connected with its performance * * * are regulated by the law of the place where the contract, by its terms, is to be performed.' *Swift & Co. v. Bankers Trust Co.*, 280 N.Y. 135, 141, 19 N.E.2d 992, 995; *Union Nat. Bank of Chicago v. Chapman*, 169 N.Y. 538, 543, 62 N.E. 672, 673, 57 L.R.A. 513, see, also, *Zwirn v. Galento*, 288 N.Y. 428, 43 N.E.2d 474; *United States Mtg. & Trust Co. v. Ruggles*, 258 N.Y. 32, 38, 179 N.E. 250, 251, 79 A.L.R. 802; *Restatement, Conflict of Laws*, §§ 332, 358; *Goodrich on Conflict of Laws* (2d ed., 1938), p. 293. What constitutes a breach of the contract and what circumstances excuse a breach are considered matters of performance, governable, within this rule, by the law of the place of performance. See *Richard v. American Union Bank*, 241 N.Y. 163, 166-167, 149 N.E. 338, 339, 43 A.L.R. 512; *Restatement, Conflict of Laws*, § 370; *Goodrich, op. cit.*, p. 293.

"Many cases appear to treat these rules as conclusive. Others consider controlling the intention of the parties and treat the general rules merely as presumptions or guideposts, to be considered along with all the other circumstances. See *Wilson v. Lewiston Mill Co.*, 150 N.Y. 314, 322-323, 44 N.E. 959, 961-962; *Stumpf v. Hallahan*, 101 App.Div. 383, 386, 91 N.Y.S. 1062, 1063, affirmed 185 N.Y. 550, 77 N.E. 1196; *Grand v. Livingston*, 4 App.

Div. 589, 38 N.Y.S. 490, affirmed 158 N.Y. 688, 53 N.E. 1125. And still other decisions, including the most recent one in this court, have resorted to a method—first employed to rationalize the results achieved by the courts in decided cases, see *Barber Co. v. Hughes*, 223 Ind. 570, 586, 63 N.E.2d 417—which has come to be called the ‘center of gravity’ or the ‘grouping of contacts’ theory of the conflict of laws. Under this theory, the courts, instead of regarding as conclusive the parties’ intention or the place of making or performance, lay emphasis rather upon the law of the place ‘which has the most significant contacts with the matter in dispute.’ *Rubin v. Irving Trust Co.*, 305 N.Y. 288, 305, 113 N.E.2d 424, 431; see also, *Jones v. Metropolitan Life Ins. Co.*, supra, 158 Misc. 466, 469-470, 286 N.Y.S. 4, 8-9; *Jansson v. Swedish American Line*, 1 Cir., 185 F.2d 212, 30 A.L.R.2d 1385; *Barber Co. v. Hughes*, supra, 223 Ind. 570, 63 N.E. 2d 417; *Boissevain v. Weil*, (1949) 1 K.B. 482, 490-492; Cook, ‘Contracts’ and the Conflict of Laws: ‘Intention’ of the Parties, 32 Ill. L. Rev. 899, 918-919; Harper, Policy bases of the Conflict of Laws; Reflections on Rereading Professor Lorenzen’s Essays, 56 Yale L. J. 1155, 1163-1168; Note, Choice of Law Problems in Direct Actions Against Indemnification Insurers, 3 Utah L. Rev. 490, 498-499.

“Although this ‘grouping of contacts’ theory may, perhaps, afford less certainty and predictability than the rigid general rules (see Note, op. cit., 3 Utah L. Rev. 490, 498), the merit of its approach is that it gives to the place ‘having the most interest in the problem’ paramount control over the legal issues arising out of a particular factual context, thus allowing the forum to apply the policy of the jurisdiction ‘most intimately concerned with the outcome of [the] particular litigation.’ 3 Utah L. Rev., pp. 498-499. Moreover, by stressing the significant contacts, it enables the court, not only to reflect the relative interests of the several jurisdictions involved (see *Vanston Bondholders*

Protective Committee v. Green, 329 U.S. 156, 161, 162, 67 S.Ct. 237, 239, 91 L.Ed. 162), but also to give effect to the probable intention of the parties and consideration to 'whether one rule or the other produces the best practical result.' *Swift & Co. v. Bankers Trust Co.*, supra, 280 N.Y. 135, 141, 19 N.E.2d 992, 995; see *Vanston Bondholders Protective Committee v. Green*, supra, 329 U.S. 156, 161, 162, 67 S.Ct. 237, 239."

Numerous courts in recent years have turned to this theory in resolving conflict of laws questions arising out of multistate transactions.^a The points of contact theory appears to be the rationale in at least two tort cases, although there is no actual mention of the theory in the opinions. See *Schmidt v. Driscoll Hotel Inc.*, 249 Minn. 376, 82 N.W.2d 365 (1957); *Haumschild v. Continental Casualty Co.*, 7 Wis. 2d 130, 95 N.W.2d 814 (1959).

This court stated the applicable principles of the theory in *Vanston Bondholders Protection Committee v. Green*, 329 U.S. 156, 161-162, 67 S.Ct. 237, 91 L.Ed. 163 (1946), applied the theory in *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541, 548, 68 S.Ct. 682, 92 L.Ed. 863 (1948), and specifically referred to the theory and its accord with the results reached by this Court in *Richards v. United States*, 369 U.S. 1, 12-13, 82 S.Ct. 585, 7 L.Ed.2d 492 (1962).

^a*Atkinson v. Superior Court*, 49 Cal.2d 338, 316 P.2d 960 (1957), certiorari denied 357 U.S. 569, 78 S.Ct. 1381, 2 L.Ed. 2d 1546 (1958); *Internatio-Rotterdam, Inc. v. River Brand Rice Mills, Inc.*, 259 F.2d 137 (2nd Cir. 1958), certiorari denied 358 U.S. 946, 79 S.Ct. 352, 3 L.Ed.2d 352 (1959); *Zogg v. Pennsylvania Mutual Life Insurance Co.*, 276 F.2d 861 (2nd Cir. 1960); *Stubbe v. Sonnenschein* 299 F.2d 185 (2nd Cir. 1962); *Richland Development Company v. Staples*, 295 F.2d 122 (5th Cir. 1961); *Boyer v. Travelers Indemnity Co.*, 280 F.2d 289, (6th Cir. 1960); *Bowles v. Zimmer Manufacturing Co.*, 277 F.2d 868 (7th Cir. 1960); *Rubin v. Irving Trust Co.*, 305 N.Y. 288, 113 N.E.2d 424 (1953).

The development of the "points of contact" or "center of gravity" theory and its adoption by the courts is a needed step in the field of conflict of laws as applied to multi-state transactions. Not only does it establish a trend in this area which leads to an administration of justice which comports with the realities as revealed by the facts in any given case, but it also constitutes a recognition on the part of the courts that arbitrary rules, conceived and founded in legal fiction, should not be allowed to prevail when they offend equity, justice, common sense, and the facts of the case.

It is the contention of the Plaintiff, State of Texas, that the "points of contact" theory should govern in the determination of the choice of laws question presented by this controversy. By applying this theory the Court will be able to take into account all of the known facts relating to these intangible obligations and the transactions out of which they arose. Then, by considering the respective interests of the states involved and the significant contacts of each, the Court will be in a position to make a choice of laws decision which is equitable and just rather than one which is dictated by legal fiction.

A.

Obligations For Royalty, Mineral Proceeds And Delay Rental From Texas Lands

Although we have discussed these particular items under I above and contend that the argument there presented conclusively demonstrates that the State of Texas is entitled to take these items under its laws, as an alternative argument, we here further consider these items under the "points of contact" theory.

The rights of each of the persons to whom these obligations are owed were created by either an oil and

gas lease, a mineral deed, or a royalty deed relating to Texas land; the validity of each of these rights is dependent upon compliance with Texas laws relating to conveyances of real property; the obligations arose through the operations of the division offices of Sun Oil Company located in Texas, as the direct result of oil and gas leases negotiated and executed by the Texas offices without necessity of approval by higher authority; the validity of these oil and gas leases is dependent upon the laws of Texas; the bookkeeping entries relating to these obligations were made in, and are kept in, the Texas offices; all checks in payment of these obligations were drawn on Texas banks by the Texas division offices.

New Jersey is the state under whose laws Sun Oil Company is chartered as a corporation and it is also the state of last known address of some of the persons to whom these obligations are owed.

Pennsylvania is the state in which Sun Oil Company maintains its principle executive offices and overall policy decisions concerning operation of the company are made there. Pennsylvania is also the state of last known address of some of the persons to whom these obligations are owed.

Florida is the state of last known address of some of the persons to whom these obligations are owed.

A consideration of the points of contact of each of the party states with the transactions out of which these obligations arose merely serves to highlight the vital and intimate relationship of Texas to these transactions. The disposition of the proceeds from the sale of property classed as real under Texas law is involved. Property which constitutes one of the great natural resources of the State of Texas and the production of

which is closely regulated by public authorities. It is submitted that the obvious significance of the contacts of the State of Texas with these transactions and its intimate connection with the obligations arising out of these transactions, make Texas the "center of gravity" of these transactions and entitle Texas to take these obligations under its escheat statutes.

B.

Unclaimed Wages, Payments For Services And Supplies, Amounts Payable For Em- ployee Expenses

The obligations owed for wages and employee expenses arose out of contracts of hire negotiated and entered into by the Texas division offices of Sun Oil Company with the persons to whom these obligations are owed; these employers were subject to the direction and control of the Texas division offices in the performance of their duties; the contracts for the purchase of services and supplies were negotiated and entered into by the Texas division offices of Sun Oil Company; all checks in payment of these obligations were issued by the Texas division offices and were drawn on accounts in Texas banks; all bookkeeping entries relating to these obligations were made in, and are kept in, the Texas division offices.

The points of contact of New Jersey, Pennsylvania and Florida are the same as noted above in the case of royalties, mineral interests and delay rental from Texas lands.

The facts relating to the transactions out of which these obligations arose clearly indicate that the State of Texas has the most intimate points of contact with these transactions and should therefore, in equity and

fairness, be entitled to take these obligations under its escheat statutes.

C.

Cash And Stock Scrip Dividends

Texas is the state of last known address of the shareholders to whom these unclaimed dividends are owed.

Sun Oil Company, being a New Jersey Corporation, keeps a set of its stock and transfer records at a statutory office in New Jersey in compliance with New Jersey corporate laws.

These dividends were declared by the board of directors of Sun Oil Company in Philadelphia, Pennsylvania; the dividend checks and scrip certificates were issued in Pennsylvania; a set of stock and transfer records are maintained at the Philadelphia office.

The State of Florida has no contact with these obligations.

The State of New Jersey accords great significance to the fact that Sun Oil Company is chartered under its corporate statutes and insists that this alone is sufficient to justify escheat of unclaimed dividends. Is the fortuitous circumstance that the New Jersey statutes are such that they attract a large number of incorporators who charter corporations under its laws and depart, leaving only the records and office address required by the statutes, sufficient grounds for the escheat of all unclaimed dividends of such corporations? We think not.

Dividends declared by a corporation constitute a distribution of a portion of the net earnings of the corporation among its owners. In the present case, these earnings were derived from the extensive operations

of Sun Oil Company in many states, and were derived under the sovereign protection of the statutes of each of such states. There is no way to trace the origin of the assets which pay a particular dividend. What then is the significant factor or contact which determines which of the parties to this controversy shall be entitled to escheat these dividends? It seems illogical to conclude that the State of Pennsylvania should prevail on the strength of the mere fact that the board of directors met and declared these dividends at the executive offices of Sun Oil Company in Philadelphia. The meeting place of the board of directors is a matter of free choice and could just as well be in any of the 50 states.

Neither does it seem logical to attach any particular significance to the physical location of the stock books and transfer records. A corporation may maintain several sets of stock and transfer books and, in the absence of a statute to the contrary, may keep such books at the office of a transfer agent and registrar which is located in neither the state of incorporation nor the state where the principle executive offices are located. This too would be a matter dependent upon the choice of the corporation and the applicable state statutes regulating corporate affairs. Consequently, it has no significance in the determination of which state is entitled to escheat corporate dividends.

Even though the last known address of a shareholder may presently be incorrect for purposes of delivery of dividends, such address does lead us to certain conclusions which establish significant contacts with the state of last known address. The stockholder was obviously at such address at the time of the stock transfer. The state of last known address would be the state where the stock certificate was last known to have been pres-

ent. Presumably the stock was purchased and delivered in the state of last known address and as a consequence title would be determined by the laws of such state. *Direction Der Disconto-Gesellschaft v. United States Steel Corp.*, 267 U.S. 22, 28, 45 S.Ct. 207, 69 L.Ed. 495 (1925).

In view of the foregoing observations, the single fact that the last known address of the persons to whom these dividends are owed was within the State of Texas establishes contacts with the transactions giving rise to these obligations that are of greater significance than the contacts with any of the other parties to this controversy, therefore, the escheat laws of the State of Texas should be applicable to these dividends.

D.

Royalty, Mineral Proceeds And Delay Rental Derived From Land In Other States

None of the obligations in this category arose from the production of oil or gas within either of the states that are parties to this controversy. So far as is known to counsel for the State of Texas, and as reflected by the record in this controversy, none of the states wherein lie the lands from which this category of obligations was derived have asserted a claim of any kind to these obligations.

These obligations arose out of oil and gas leases negotiated and entered into by the Texas division offices of Sun Oil Company; all bookkeeping entries relating to these obligations were made in, and are kept in, Texas; all checks in payment of these obligations were issued by the Texas division offices on Texas bank accounts with the exception of checks in payment of obligations arising from Louisiana leases; the last

known address of some of the persons to whom these obligations are owed is in Texas.

The State of New Jersey's sole connection with these obligations is the fact that Sun Oil Company is incorporated under the laws of that State.

Pennsylvania is the state in which Sun Oil Company maintains its principle executive offices and is the state of last known address of some of the persons to whom these obligations are owed.

The State of Florida has no contact with the transactions relating to these obligations.

The claims of the states now before this Court, to the obligations in this category, may presently be resolved according to the significance of their contacts with these obligations. However, the ultimate taking of these items by the state which prevails in this controversy would certainly be contingent upon: (1) the absence, at the time of such taking, of an asserted claim to these same obligations by the state in which the land connected with these obligations is located; and (2) the absence of a statute or a pronounced public policy classifying as real property obligations of this character.

Since these obligations arose out of transactions negotiated and directed by the Texas division offices in the exercise of their authority in such matters, and the records and accounts relating to these obligations were kept and maintained in such offices, as between the parties to this controversy, the State of Texas has the most significant and intimate contacts with these transactions and is entitled to take these obligations under its escheat statutes.

E.

Unclaimed Wage Deductions For Purchase Of War Bonds

The last known address of the persons to whom these refunds are due is in the State of Texas.

New Jersey has no contact other than as the state of incorporation.

The State of Florida has no contact with these obligations.

The persons to whom these refunds are due were hired by the Philadelphia office of Sun Oil Company; some of their duties were performed within the State of Pennsylvania; all payroll records for these persons were kept in Philadelphia and checks in payment of their wages were issued there on Pennsylvania bank accounts. It is presumed that these employees were under the direction and control of the Philadelphia office in the performance of their duties.

The significance of these contacts with the State of Pennsylvania show that it is the state most intimately concerned with the transactions out of which these obligations arose, therefore, Pennsylvania is entitled to take these obligations under its escheat statutes.

F.

Obligations Of Unknown Origin

These obligations are reflected by the records of the Oklahoma division office of the Sun Oil Company and the nature of the transactions out of which they arose is unknown to the company.

The only known points of contact being that: (1) the

last known address was in Texas and (2) the checks in payment of these obligations were issued by the Oklahoma office.

As between the states who are parties to this controversy, the only state with a point of contact of any significance is Texas as the state of last known address. This being the only significant point of contact upon which to base a choice of law under the "points of contact" theory the escheat law of the State of Texas should apply to these obligations.

CONCLUSION

An order of priority to be observed by states pressing conflicting escheat claims against the same intangibles must be established before it will ever become safe for the debtor to relinquish to any one state the moneys owed on debts arising out of the interstate activities of the debtor. Also, the establishment of definite and authoritative standards by which the states can be governed in asserting their escheat powers with regard to persons and property connected with other states is absolutely essential to peace and good order in the relationships of the states under our federal system.

The State of Texas respectfully submits that the principles of law set forth in the foregoing argument present an orderly and equitable means of determining which of the states, as parties to this controversy, are entitled to institute proceedings in state courts for the escheat of the obligations with which we are here

concerned and requests this Honorable Court to so conclude by its judgment rendered herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Waggoner Carr, Attorney General of the State of Texas, one of the attorneys for the Plaintiff, State of Texas, in this cause, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the day of February, 1964, I served copies of the Exceptions To The Report Of The Special Master And Supporting Brief, filed by the Plaintiff, on each of the parties to this cause by depositing copies in a United States Post Office or Mail Box as certified mail with air mail postage prepaid and addressed as follows:

Honorable Richard J. Hughes
Governor of New Jersey
State House
Trenton, New Jersey

Honorable Arthur J. Sills
Attorney General of New Jersey
State House
Trenton, New Jersey

Honorable William W. Scranton
Governor of Pennsylvania
State Capitol
Harrisburg, Pennsylvania

Honorable Walter E. Alessandroni
Attorney General of Pennsylvania
State Capitol
Harrisburg, Pennsylvania

Honorable C. Farris Bryant
Governor of Florida
State Capitol
Tallahassee, Florida

Honorable James Kynes, Jr.
Attorney General of Florida
State Capitol
Tallahassee, Florida

Honorable Henry A. Frye
Pepper, Hamilton & Scheetz
2001 Fidelity-Philadelphia Trust Building
Philadelphia, Pennsylvania

It is further certified that additional copies have been served on the states named in Paragraph VI of Plaintiff's Complaint by depositing copies in a United States Post Office or Mail Box, addressed to the Governors and Attorneys General of each of such states, with first class or air mail postage prepaid.

WAGGONER CARR
Attorney General of Texas

APPENDIX

Revised Civil Statutes of Texas (Vernon 1948)

Art. 3272. When estates shall escheat

If any person die seized of any real estate or possessed of any personal estate, without any devise thereof, and having no heirs, or where the owner of any real or personal estate shall be absent for the term of seven years, and is not known to exist, leaving no heirs, or devisee of his estate, such estate shall escheat to and vest in the State. Where no will is recorded or probated in the county where such property is situated within seven years after the death of the owner it shall be prima facie evidence that there was no will, and where no lawful claim is asserted to, or lawful acts of ownership exercised in, such property for the period of seven years, and this has been proved to the satisfaction of the court, it shall be prima facie evidence of the death of the owner without heirs. Any one paying taxes to the State on such property, either personally or through an agent, shall be held to be exercising lawful acts of ownership in such property within the meaning of this title, and shall not be concluded by any judgment, unless he be made a party by personal service of citation, to such escheat proceedings, if a resident of this State, and his address can be secured by reasonable diligence, but, if he be a non-resident of the State or can not be found, the personal service of citation shall be made upon any agent of such claimant, if such agent, by the use of reasonable diligence, can be found; such diligence to include an investigation of the records of the office and inquiry of the tax collector and tax assessor of the county in which the property sought to be escheated is situated.

Art. 3272a. Personal property subject to escheat

Report by holder of personal property

Section 1. Every person holding personal property subject to escheat under Article 3272 of Title 53, Revised Civil Statutes of Texas, 1925, at the time of the effective date of this Act, shall, within sixty (60) days thereafter, file a report thereof with the State Treasurer, as specified in Section 2 of this Article. Every person who holds personal property which becomes subject to escheat under Article 3272 after the effective date of this Act, shall, within sixty (60) days thereafter, file a report thereof with the State Treasurer, as specified in Section 2 of this Article; provided that after one report has been made under this Article by any person, subsequent reports by such person may be made on an annual basis on or before May 1st of each year.

(a) The term "person" as used in this Article means any individual, corporation, business association, partnership, governmental or political subdivision or officer, public authority, estate, trust, trustee, officer of a court, liquidator, two (2) or more persons having a joint or common interest, or any other legal, commercial, governmental or political entity, except banks, savings and loan associations, banking organizations or institutions.

(b) The term "personal property" includes, but is not limited to, money, stocks, bonds and other securities, bills of exchange, claims for money or indebtedness and other written evidences of indebtedness, dividends, deposits, accrued interest, purchase payments, sums payable on certified checks, certificates of membership in a corporation or association, amounts due and payable under the terms of any insurance policy,

security deposits, unclaimed refunds and deposits for utility or other services, funds to redeem stocks and bonds, undistributed profits, dividends, or other interests, production and proceeds from oil, gas and other mineral estates, and all other personal property and increments thereto, whether tangible or intangible, and whether held within this State, or without the State for a person or beneficiary whose last known residence was in this State.

(c) The term "subject to escheat" shall include personal property presumed to be subject to escheat by the prima facie conclusions contained in Article 3272, including all personal property (1) of which the existence and whereabouts of the owner are unknown and have been unknown to the holder for more than seven (7) years and (2) on which, from the knowledge and records of the holder it appears that no claim or act of ownership has been asserted or exercised during the past seven (7) years and (3) on which no will of the last known owner has been recorded or probated in the county where the property is situated within the past seven (7) years.

Form of Report

Sec. 2. The report shall be prepared and returned in triplicate, verified under oath, and shall include the following:

(a) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of the property reported; or the name and address, if known, of any person who may be entitled to such property; together with a brief description of the property, which in the case of deposits, shall disclose the total balance. If any deductions have been made therefrom by the holder for service,

maintenance, or other charges, they shall be disclosed unless such deductions have been fully restored in the total amount reported as provided in subsection (d) below.

(b) In case of unclaimed funds of life insurance corporations, the full name of the insured beneficiary or annuitant and his last known address according to the life insurance corporation's records.

(c) In the case of mineral proceeds, a list of all credits grouped as to the counties from which the credited proceeds were derived, including credit which have theretofore been charged off or disposed of in any manner except by payment to the owner thereof; giving the name and last known address of the owner; the fractional mineral interest of the owner; description and location of the land or lease from which the oil, gas, or mineral was produced; the name of the person, firm or corporation who operated the oil or gas well or mine; the period of time during which such proceeds accumulated and the price for which such oil, gas, or other mineral was sold, each such several ownerships to be given an identifying number. The nature and identifying number, if any, or description of the property, and the amount appearing from the records to be due, except that items of value under Ten Dollars (\$10) each may be reported in aggregate;

(d) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property. Since the State upon escheat is entitled to all rights of the former owner, in the case of dormant deposits or accounts on which deductions for service, maintenance, or other charges would be restored under the policy or procedures of the holder upon request by the owner,

such deposits or accounts shall be reported and shall be subject to escheat hereunder in the same amount to which the former owner would be entitled upon such request; and

(e) Other information which may be prescribed by rule of the State Treasurer as necessary for the administration of this Article.

(f) The verification under oath at the conclusion of the report shall include the following language:

"The foregoing report contains a full and complete list of all personal property held by the undersigned for which, from the knowledge and records of the undersigned, it appears that the existence and whereabouts of the owner are unknown and have been unknown for more than seven (7) years and on which no claim or act of ownership has been asserted or exercised during the past seven (7) years and on which no will of the last known owner has been recorded or probated in the county where the property is situated within the past seven (7) years."

(g) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer, and if made by a public corporation, by its chief fiscal officer.

Notice and Publication of Lists of Abandoned Property

Sec. 3. (a) Within sixty (60) days after the date in which the reports specified in Section 2 are received, the State Treasurer shall mail a notice thereof, as hereinafter described, to the Sheriff of the county of the domicile or principal place of business of the holder so reporting, and in cases involving more than Fifty Dollars (\$50), to the Sheriff of the county of the last

known residence of the owner if it is different from the county of the holder. The notice to the Sheriff shall be entitled 'Notice of Names of Persons Appearing to be Owners of Abandoned Property,' and shall contain:

(1) The names in alphabetical order and the last known addresses, if any, of persons listed in the report and entitled to notice as hereinbefore specified; and

(2) A statement that information concerning the amount and description of the property and the name and address of the holder may be obtained by any persons possessing or claiming an interest in the property by addressing an inquiry to the holder so reporting. Within ten (10) days after receipt of said notice, it shall be the duty of the Sheriff to post it on the courthouse door or the courthouse bulletin board, where it shall remain posted for a period of not less than thirty (30) days. Thereafter the Sheriff shall return the notice to the State Treasurer with his certificate showing the date and time of posting required by this Section.

Determination of Escheat

Sec. 4. (a) All personal property reported under the provisions of this Article remaining unclaimed at the expiration of one hundred and twenty (120) days from the date upon which the report by the holder of such property was received by the State Treasurer, shall be deemed to be abandoned, and shall escheat to, and the title thereto vest in, the State of Texas, and the State Treasurer shall so certify to the Attorney General.

(b) The Attorney General shall immediately institute an action in a District Court of the county in which the holder resides or is domiciled to judicially determine that such property has escheated to the

State. The suit shall be brought as a class action, and may include the property reported by more than one holder from the same or other counties, and the sworn petition shall state that the action is brought by the State of Texas upon the relation of the State Treasurer by the Attorney General for the purpose of escheating and vesting the title in the State of Texas of the property therein described, stating the description of the property which has escheated to the State, the name of the person or holder possessed thereof and the names of the person or persons claiming, or last known to have claimed, such property, if any such names are known, all of which information shall be separately listed in parallel columns, and the facts and circumstances in consequence of which such property is claimed to have escheated, praying that such property be escheated, and the title thereto vested in the State of Texas. The petition shall not be subject to objections as to the misjoinder of parties or misjoinder of causes of action.

(c) The Clerk of the Court in which such suit is filed shall issue citation as in other civil cases, which shall be styled, 'The State of Texas,' and shall be directed to the person or holder named in the petition as being possessed of the property described in said petition, which citation need not be accompanied by a copy of the original petition filed in the suit, but which shall state concisely the nature of the suit, a description of the property possessed by the person or holder to whom the citation is directed, and the name of the person or persons claiming, or last known to have claimed, such property as set forth in the petition, together with the facts and circumstances in consequence of which such property is claimed to have been escheated, and the prayer contained in the petition.

(d) The Clerk of the Court in which suit is filed shall also issue citation which shall be styled, "The State of Texas," and shall be directed to all persons interested in, claiming, or asserting an interest in the abandoned property, which description of such property, together with the name of the last holder thereof and the names of the person or persons claiming, or last known to have claimed, such property, shall be listed as described in the petition, to appear and answer as provided in the Texas Rules of Civil Procedure, which citation shall be published in accordance with Rules 114, 116, 117, and 118, Texas Rules of Civil Procedure, except that such citation shall be published only once at least twenty-eight (28) days before the return day of the citation, and except as such rules are further herein modified. The costs of publication shall be paid by the State Treasurer at the rate set out in Article 29, Revised Civil Statutes. Any person claiming an interest in such abandoned property, whether such person is or is not specifically named in the petition, may appear and answer in such proceedings as in other civil suits.

(e) All actions brought under this Section shall be governed by the procedure provided in the Texas Rules of Civil Procedure relating to class actions, unless otherwise provided in this Article.

(f) The sworn reports filed with the State Treasurer in accordance with Section 2 of this Article shall, when offered in evidence, constitute prima facie evidence that the property set forth therein has no owner and has escheated to the State, both under the provisions of this Article and Article 3272 of this Title, unless the person or claimant to the property set forth and described in such report shall file a written denial, under oath, denying that such property has no owner

and has escheated to the State, and asserting a claim and proof of ownership thereto. In the absence of such a sworn plea, the sworn report shall be received in evidence as conclusive proof that the property set forth and described in such report has no owner and has escheated to the State, both under the provisions of this Article and Article 3272 of this Title.

(g) If it appears to the Court that the property described in the petition has been actually abandoned, and that there is no person entitled to it, judgment shall be rendered declaring such property escheated and vesting the title thereto in the State of Texas. The judgment shall also direct the holder of the property so described, which has been actually abandoned and escheated and the title thereto vested in the State, to deliver such property immediately to the State Treasurer. If no person or claimant to any property described in the petition shall appear and answer within the time provided for entering such appearance and answer by the Texas Rules of Civil Procedure, the Court shall render judgment by default as to such property in favor of the State of Texas. If the Court should find that such property has not been actually abandoned and therefore should not be escheated and the title thereto vested in the State of Texas, and that the title to such property should vest in the person or persons claiming the title to or an interest in such property the Court shall direct such property to be delivered to the person or persons lawfully entitled to possession thereof. Any person who has entered an appearance in the trial of such cause, and the Attorney General on behalf of the State, shall have the right to prosecute an appeal from the judgment of the trial court as provided by the Texas Rules of Civil Procedure. No appeal bond shall be required on an appeal by the State of Texas.

(h) After the judgment of the Court vesting the title to such property in the State of Texas has become final, the Attorney General shall so certify to the State Treasurer. When such certification has been received by the State Treasurer and the property which has been escheated and the title thereto vested in the State of Texas under such judgment has been delivered to the State Treasurer in accordance with the mandate contained in such judgment, the State Treasurer shall immediately place the sums of money so escheated to the State of Texas in the State Treasury to the credit of the General Fund, subject to the provisions of Section 14 of this Article. Where the title to intangible personal property other than money has been adjudged to be vested in the State of Texas, and such property has been sold as provided in Section 5 hereof, the State Treasurer shall deposit the proceeds received from the sale of such intangible personal property in the State Treasury to the credit of the General Fund. After delivery of the property to the State Treasurer, the holder thereof shall be relieved of all liability therefor to any person who may later assert a claim thereto.

Sale of Abandoned Property

Sec. 5. (a) All abandoned property other than money delivered to the State Treasurer under this Article which has been escheated and the title thereto vested in the State of Texas shall be sold by the State Treasurer to the highest bidder at public sale in whatever city in the State in his judgment affords the most favorable market for the property involved. The State Treasurer may decline the highest bid and reoffer such property for sale if he considers such bid insufficient. He need not offer any property for sale, if, in his opinion, the probable cost of sale is in excess of the value of the property.

(b) Any sale held under this Section shall be preceded by a single publication of notice thereof at least three (3) weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold, which shall be paid for at the rate provided in Article 29, Vernon's Civil Statutes.

(c) The purchaser at any sale conducted by the State Treasurer pursuant to this Section, shall receive title to the property purchased, free from all claims of the owner or prior holder thereof, and of all persons claiming through or under them. The State Treasurer shall execute all documents necessary to complete the transfer of title.

Claim of Interest in Abandoned Money and Intangible Personal Property Escheated to the State

Sec. 6. (a) Any person claiming an interest in any property paid or surrendered to the State Treasurer which has been adjudged to be actually abandoned, escheated, and the title thereto vested in the State of Texas under the provisions of this Article who was not actually served with notice, and who did not appear, and whose claim was not specifically presented and considered during the action or at the proceedings resulting in its escheat and the title thereto vested in the State of Texas, may file his claim to such property with the State Treasurer, which claim shall be filed on forms and through procedures prescribed with the State Treasurer. Provided that any such person claiming an interest in money which has been paid to the State Treasurer by any insurance company may file his claim to such property with the insurance company where such money was originally deposited, which claim shall be filed on forms and through procedures

prescribed by the State Treasurer. Upon approval of any such claim the insurance company shall pay the amount of any such claim. Any insurance company paying such a claim may file a claim for reimbursement as provided for in Section 7 of this Act.

(b) No person holding a power of attorney from a claimant who files a claim to such property as hereinabove provided on behalf of any claimant, shall contract for or receive from the claimant for his services an amount in excess of ten per cent (10%) of the value of the property recovered, except that where suit has been instituted as provided in Section 8 hereof, such person may contract for and receive a fee to be fixed by the Court, not to exceed twenty-five per cent (25%) of the value of the property recovered.

Determination of Claims

Sec. 7. (a) It shall be the joint duty and responsibility of the State Treasurer and the Attorney General or their duly authorized assistants, to consider the validity of any claim filed under this Article.

(b) The State Treasurer and the Attorney General may hold a hearing and receive evidence concerning any claim filed under the provisions of Section 6 of this Article. If a hearing is deemed necessary in order to determine a claimant's right to receive funds which have escheated to the State, a finding and a decision in writing on each claim filed, stating the substance of the evidence heard and the reasons for such decision, shall be signed by both the State Treasurer and the Attorney General, and shall be a public record. If the claim is allowed as a valid, just and equitable one in the discretion of the above-mentioned officers, it shall be approved and signed by both officers.

(c) If the claim is for money which has been declared to be abandoned, escheated, and the title thereto vested in the State of Texas under the provisions of Section 4 of this Article, and the claim has been allowed, approved, and signed as provided herein, the claim shall be paid by the State Treasurer from the Escheat Expense and Reimbursement Fund. If the claim is for intangible personal property which has been declared to be abandoned, escheated, and the title thereto vested in the State of Texas under the provisions of Section 4 of this Article, and the property has not been sold by the State Treasurer as provided in Section 5 of this Article, the State Treasurer shall promptly deliver such property to the claimant. If such property has been sold, as provided in Section 5 of this Article, the full amount of the claim shall be paid to the claimant without deduction for costs of administration, service charges, or notices of any kind whatsoever.

(d) If the claim is for reimbursement by any insurance company for payments made pursuant to Section 6, and if such claim has been allowed, approved, and signed as provided herein, the claim shall be paid to such insurance company by the State Treasurer from the Escheat Expense and Reimbursement Fund.

Judicial Action Upon Determination of Claims

Sec. 8. (a) Any person aggrieved by a decision of a claim under the provisions set forth in Section 6 or Section 7 or as to whose claim a final decision has been rendered within ninety (90) days after filing same, may appeal within sixty (60) days from the date of the decision rendered or the lapse of ninety (90) days as the case may be.

(b) The appeal proceeding shall be commenced in any District Court in Travis County, Texas, or in any

District Court of Texas in the county wherein the funds claimed were on deposit. The action shall be tried de novo and in all other respects be governed by the rules of practice in such court. Permission is hereby expressly granted to any and all such claimants to sue the State of Texas, as herein provided.

Examination of Records

Sec. 9. At the request of the State Treasurer or the Attorney General, or either of them, the State Auditor, State Comptroller of Public Accounts, State Banking Commissioner, Commissioner of Insurance, Securities Commissioner, the Department of Public Safety, and any District or County Attorney shall assist the State Treasurer and the Attorney General in the enforcement of this Article. The State Treasurer or the Attorney General, or the duly authorized assistants, agents, or representatives of either of them, may, at all reasonable times, examine the books and records of any person to enforce this Article and to determine if the reports (required in this Article) have been made as provided herein. The State Treasurer and the Attorney General, and their authorized assistants, agents or representatives, shall not make public or use any information derived in the course of said examination of said books and records except in the course of any judicial proceeding authorized under the provisions of this Article in an action in which the State of Texas is a party.

Reciprocity for Property Presumed Abandoned or Escheated Under the Laws of Another State

Sec. 10. If specific property which is subject to the provisions of this Article and is held for or owed or distributable to an owner whose last known address is

in another State by a holder who is subject to the jurisdiction of that State, the specific property is not presumed abandoned in this State and subject to this Article if:

(a) It has been claimed as abandoned or escheated under the laws of such other State; and

(b) The laws of such other State make reciprocal provisions that similar specific property is not presumed abandoned or escheatable by such other State when held for or owed or distributable to an owner whose last known address is within this State by a holder who is subject to the jurisdiction of this State.

Foreign Owners

Sec. 10a. This Article shall not apply to any bank account held within this State where the last known owner was a citizen and resident of another country.

Unclaimed Property Held by the Federal Government

Sec. 11. In the event of the enactment by the Federal Government of laws providing for the discovery of unclaimed property held by the Federal Government, and for the furnishing or availability of such information to the States, the State Treasurer is hereby authorized to compensate the Federal Government for the proportionate share of the actual and necessary cost of examining records, and the State of Texas shall hold the Federal Government harmless from later claims of owners of unclaimed property delivered to the State Treasurer by the Federal Government. Such compensation shall be paid from the Escheat Expense and Reimbursement Fund.

Rules and Regulations

Sec. 12. The State Treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of this Article.

Penalties

Sec. 13. Any person who wilfully fails to file a report required by this Article, or who refuses to permit examination of records as provided in this Article, or who deducts from or makes a service charge against an inactive or dormant account or other deposit of funds, shall be punished by a fine of not less than Five Hundred Dollars (\$500), nor more than One Thousand Dollars (\$1,000), or by confinement for not more than six (6) months in the county jail, or both, and in addition, shall be subject to civil penalties of not exceeding One Hundred Dollars (\$100) for each day of such failure or refusal, said civil penalties to be collected by suit in a District Court of Travis County, Texas, by the Attorney General in the name of the State of Texas.

Effect on provisions relating to escheat of estates of decedents

Sec. 14. The provisions of this Article 3272a are in addition and supplementary to and shall not be construed to repeal, alter, change, or amend any of the provisions of Article 3273 to 3289, inclusive, Title 53, Revised Civil Statutes of Texas, 1925, which provide for the escheat of estates of decedents.

Escheat Expense and Reimbursement Fund

Sec. 15. (a) There is hereby created a revolving fund to be known as the 'Escheat Expense and Reimbursement Fund' in the amount of One Hundred Thousand Dollars (\$100,000) to be held by the State

Treasurer, one half ($\frac{1}{2}$) of which shall be maintained for reimbursement of persons who obtain decisions or judgments in accordance with Sections 6 and 7 of this Article that they are entitled to escheated funds, and one half ($\frac{1}{2}$) of which shall be used by the Treasurer and the Attorney General, with expenditures and vouchers approved by both of such officers, for the purpose of enforcement of the provisions of this Title, including the expense of publishing of notices, examinations, travel, court costs, witness fees, employment of such additional assistants and other personnel as may be necessary for such purposes in either of their offices at salaries not to exceed the rate paid other employees for similar services, and all other expenses necessary for enforcement of this Title. The Governor is authorized to transfer to the Escheat Expense and Reimbursement Fund sums not to exceed Twenty Thousand Dollars (\$20,000) from any appropriations made to the Executive Department to be used and expended for the purposes above set out. Thereafter, such sums of money as may be necessary to maintain the Escheat Expense and Reimbursement Fund in the sum of One Hundred Thousand Dollars (\$100,000) shall be deposited to such Fund from funds escheated to the State pursuant to the provisions of this Act, prior to any deposit to the General Revenue Fund for such escheated funds. The Escheat Expense and Reimbursement Fund shall be subject to audit by the State Auditor and to appropriation by the Legislature for the purpose of enforcing this Title.

Art. 3273. Petition for escheat

In addition to any special proceedings provided in Article 3272a, when the Attorney General or the District or Criminal District or County Attorney shall be informed, or have reason to believe, that any estate,

real or personal, is in the condition specified in the preceding Article 3272, he shall file a sworn petition which shall set forth a description of the estate, the name of the person last lawfully seized or possessed of same, the name of the tenants or persons claiming the estate, if any such are known, and the facts or circumstances in consequence of which such estate is claimed to have escheated, praying that such property be escheated and for a writ of possession therefor in behalf of the State. If filed by any officer other than the Attorney General, he shall notify the Attorney General in writing and forward a copy of the petition in order that the Attorney General may participate in behalf of the State if he so elects, provided that all actions brought hereunder shall be governed by the procedure provided in the Texas Rules of Civil Procedure relating to class actions and the petition shall not be subject to objections as to misjoinder of parties or causes of action. This procedure shall be supplementary to and cumulative of any actions or procedures authorized in Article 3272a with respect to escheat of personal property and either procedure may be followed in applicable cases.

Art. 3274. Citation

The district clerk shall issue citation as in other civil causes for each defendant alleged in the petition to hold possession of or claim such estate and for each other person required by this title to be cited. Id.

Art. 3275. Citation by publication

The clerk shall also issue a citation, setting forth briefly the contents of the petition, for all persons interested in the estate to appear and answer at the next term of court, which citation shall be published as required in other civil suits.

Art. 3276. Claimants may appear and plead

All persons named in such petitions as tenants or persons in actual possession or claimants of the estate, and any other person claiming an interest in such estate, may appear and plead to such proceedings, and may traverse the facts stated in the petition.

Art. 3277. If no person appears

Judgment shall be rendered by default in behalf of the State if no person after due notice shall plead within the time fixed by law.

Art. 3278. Issue and trial

If any person appears and denies the title set up by the State, or traverses any material fact in the petition, issue shall be made up and tried as other issues of fact. A survey may be ordered, as in other cases where the titles or boundaries of land are drawn in question.

Art. 3279. Judgment for State

If it appears upon the facts found that the property is subject to escheat, judgment shall be rendered that the State recover the same and at the discretion of the court, recover the costs against the defendant. If such judgment is for real estate, the court shall fix the minimum price at which the same shall be sold, and a writ of possession shall be awarded as in other civil suits, but shall not issue until after the expiration of two years from the date of the final judgment. If such judgment be for personal property, a writ of possession shall issue as in other cases of judgment for the recovery of personal property. Such writ of possession shall contain such description of the property as shall identify the same.

Art. 3280. Costs against State

If it appears that the State is not entitled to such estate, the costs of such proceedings shall be taxed against the State, and certified by the clerk. The Comptroller shall, on such certificate being filed in his office, issue a warrant therefor on the treasury.

Art. 3281. Escheated lands dedicated to Permanent Free School Fund, lease or sale

All lands heretofore or hereafter escheated to the State of Texas by provisions of this Title are hereby dedicated, appropriated and set apart to the Permanent Free School Fund of the State of Texas. The Clerk of the District Court in which any judgment shall be rendered for the State escheating real estate to the State shall, within ninety (90) days of the date of said judgment, forward the Commissioner of the General Land Office at Austin, Texas, a certified copy of said judgment of escheat. The Clerk of said Court shall likewise notify the Commissioner of the General Land Office of any appeal that may be taken in said case. Upon receipt of a certified copy of the judgment escheating real estate to the State from which no appeal is taken, or upon receipt of a certified copy of notice of affirmance of any judgment escheating lands to the State, from which an appeal was taken, the Commissioner of the General Land Office shall list said lands as escheated permanent free school lands. The Commissioner of the General Land Office may lease said lands for grazing purposes under existing laws relating to the leasing for grazing purposes of unsold school lands. The Commissioner of the General Land Office may lease said lands for agricultural, residential, business or other purposes for a term of not to exceed two (2) years, said rental to be payable in

money, the amount of said rental and all other terms of the lease to be fixed by the Commissioner of the General Land Office. Any escheated permanent free school lands shall be subject to lease for oil and gas development or subject to other mineral development under Statutes governing the leasing for mineral purposes all other unsold permanent free school lands. Any escheated permanent free school lands may be sold by the Commissioner of the General Land Office for not less than one-tenth of the purchase price in cash and the balance of said purchase price payable in nine equal annual installments, said deferred installments to bear interest at the rate of six (6) per cent per annum. Any lands so sold shall be sold to the highest bidder as are other public free school lands but no escheat lands shall be sold at a price of less than Two Dollars and Fifty Cents (\$2.50) per acre. All sales of escheated permanent free school lands shall be with a reservation to the State of all the minerals in the land in favor of the Permanent Free School Fund. All sums received from the leasing, mineral developments, or sale of escheated lands shall be deposited in the Permanent School Fund of Texas. The Commissioner of the General Land Office is authorized to adopt such regulations as he deems necessary to carry out this Article. Said regulations or forms adopted shall be approved by the Attorney General.

Art. 3282. Writ of seizure

If the property recovered be personal property, a writ shall issue to the sheriff commanding him to seize such property and he shall dispose of the same by public auction in the manner provided by law for the sale of personal property under execution, and pay the proceeds of such sale less the costs of the court, into the State Treasury.

Art. 3283. Claimant not served may sue

When title to real property, or any part thereof, is adjudged to the State, it shall be subject to divestiture at the suit of any claimant not personally served with citation in such escheat proceedings, who shall institute suit therefor against the State within two years after such judgment has become final, who shall, upon trial of such issue, be adjudged the owner of the property or any part thereof, for the recovery of which the suit is brought.

Art. 3284. Appeal or writ of error

Any party who has appeared in such proceedings, and also the Attorney General or the Criminal District or District County Attorney on behalf of the State, shall have the right to persecute an appeal or writ of error upon such judgment.

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Office-Supreme Court, U.S.

FILED

FEB 14 1964

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 13 Original

STATE OF TEXAS,

Plaintiff,

vs.

STATE OF NEW JERSEY, *et al.,*

Defendants.

**EXCEPTIONS OF THE STATE OF NEW JERSEY
TO THE MASTER'S REPORT AND SUPPORTING BRIEF**

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Of Counsel and on the Brief.

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STATE OF TEXAS,

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v.

STATE OF NEW JERSEY, *et al.,*

Defendants.

EXCEPTIONS TO THE MASTER'S REPORT

Defendant, State of New Jersey, by Arthur J. Sills, Attorney General of the State of New Jersey, respectfully excepts as follows to the report of the Special Master:

I.

As to the Master's Recommended Conclusions of Law

1. The Master erred in recommending conclusion #10 (p. 20), that the "last known address of the creditor as appearing on the books of the debtor corporation is adequate and sufficient to establish the residence of the owner of the intangible property for escheat purposes." The Master should have recommended the conclusion that the last known address of the creditor, placed on the records

of Sun from 7 to 40 years ago, cannot be equated with either the domicile or residence of the creditor, especially in view of the fact that Sun's attempts to make payment to the creditor at that address have been unsuccessful.

2. The Master erred in recommending conclusion #2 (p. 18) as a general proposition of law, that "only one state has power to escheat" both tangible and intangible property. However, we contend that in the case at hand only the State of New Jersey, the domicile of Sun, has the prior or superior right to escheat the property held by Sun, and the Master erred in not so concluding.

3. The Master erred in recommending conclusion of law #9 (p. 20), which is as follows:

"9. Justice and equity would seem to require that intangible property, sought to be escheated by a state, be located in the state of last known address of the owner thereof, rather than at the residence of the debtor who has no interest in such property."

The Master erred in not finding that established principles of law and the equities and convenience in the administration of justice require the finding in this case that only New Jersey, Sun's domicile, has the power to take possession of the unclaimed intangibles held by Sun. Under the New Jersey Custodial Statute the property is first taken into custody and is later escheated unless the person entitled to the property or another state establishes a superior right thereto.

4. The Master's recommended conclusion #13 (p. 20) is as follows:

"13. No party to this action has power or jurisdiction to escheat the property in the action owned by persons who left no last known residence or address. Only

New Jersey, the domiciliary residence of the debtor corporation, has power and jurisdiction to require payment of the debts representing such property under its custodial statute."

We respectfully submit that the Master erred in the first sentence of the above recommended conclusion by holding that no state in this action has power or jurisdiction to escheat the property which was owned by persons who left no known residence or address. We agree with the second sentence of recommended conclusion #13, namely, that only New Jersey, under its custodial statute, has the power and jurisdiction to require payment of the debts representing such property. However, we also contend that New Jersey has the power not only to take custody of such property but to escheat same, that is, to perfect title thereto and retain the same permanently.

5. The Master erred in recommending conclusion #4 (p. 19) by saying that, "All intangible property results from a debtor-creditor relationship" and that the "debtor has no proprietary interest in the intangible property." This led to other erroneous recommended conclusions of the Master, numbered 7, 8, 11, 12 and 13. In the main these conclusions result from the Master's view that only the state where the creditor once had an address is the present situs of the intangible property and, therefore, the only state that has legal power and jurisdiction to escheat that asset. The Master erred in not recognizing that the property in question is now ownerless property, that the residence and domicile of the persons who were once entitled to the property are now unknown and that the only certain fact of today's whereabouts of the property is that the property has been commingled with the general assets of Sun. Those assets can surely be reached in New Jersey, the only permanent location of that corporation. Unless custody is taken by a state, Sun could acquire a proprietary

interest in the property since it has possession thereof and, by passage of time, such possession may ripen into ownership.

II.

As to New Jersey's Offer of Exhibits

The Master erred in rejecting the offer in evidence by New Jersey of certain exhibits to be made part of the record. See Findings of Fact, #XIX, pp. 17-18. These exhibits were numbered one to five for identification.

Exhibit number five was a copy of the report of unclaimed property made by Sun Oil Company to the State of Texas on which the within action is predicated. No objection by any party in this action was made to the offer of these exhibits. The Master did not say this report was irrelevant or immaterial; he rejected it on the ground that it "served no useful purpose and would only confuse what was clearly set out in the agreed Stipulation of Facts."

Exhibits one to four were certified copies of judgments entered against Sun Oil Company some years ago in separate cases in the Superior Court of New Jersey in which certain intangibles not involved in this action were awarded to the State of New Jersey. Three judgments provided for custody and one judgment provided for escheat of the intangibles there involved. The Master considered these exhibits immaterial.

New Jersey contends that since the Master and this Court are sitting without a jury, there could be no prejudice in the admission of these exhibits. Moreover, the judgments were offered to show that New Jersey courts had adjudged property of the nature here involved to be subject to the New Jersey Custodial and Escheat Laws and the judgments furnished details for the general statement of fact to which all parties had stipulated. See Paragraph XVIII, p. 16 of Findings of Fact.

BRIEF

Statement of the Case

This is an original action commenced by the State of Texas (Texas) against the State of New Jersey (New Jersey), the State of Pennsylvania (Pennsylvania), and Sun Oil Company (Sun), a corporation organized and existing under the laws of the State of New Jersey and authorized to do business in every state of the United States and in foreign countries. By leave granted, the State of Florida (Florida) has intervened as a party defendant.

On September 21, 1961, New Jersey commenced an action against Sun under the New Jersey Custodial Escheat Statute, N.J.S. 2A:37-29, *et seq.*, by which New Jersey sought a judgment directing Sun to pay to the State Treasurer for safekeeping certain unclaimed wages, dividends, interest and other general cash obligations. (Prior to this date, New Jersey had obtained three judgments under this custodial Statute against Sun with respect to other unclaimed intangible obligations of Sun.)

Thereafter, on November 7, 1961, the State of Texas enacted an escheat law, Article 3272(a), Title 53, Vernon's Civil Statutes of Texas. On or about April 28, 1962, the State of Texas commenced the within original action by the filing of a motion in this Court for leave to file a complaint. Texas alleged that it had an exclusive right to escheat certain unclaimed intangibles in the possession of Sun Oil Company and sought to enjoin the prosecution of the custodial action then pending in the State of New Jersey. By agreement between New Jersey and Sun, and without prejudice, the State of New Jersey, for the sole purpose of expediting the disposition of the complaint of Texas, volun-

tarily obtained an order in the New Jersey Superior Court staying further proceedings therein until the disposition of the within matter.

The intangible personal property alleged to be involved in this action, more particularly described in the stipulation of counsel filed in this cause, consists of cash claims for:

- (a) Wages for services performed in Texas, Louisiana, and Arkansas by employees of Sun whose last known addresses on the books of Sun were either in (a) Texas, (b) states other than Texas or (c) unknown. Said last known addresses were placed on Sun's books before December 31, 1954, and Sun has been unable to pay these claims since said date.
- (b) Supplies purchased and services rendered in Texas, Louisiana, Arkansas, California, and Mississippi by persons whose last known addresses on the books of Sun were either in (a) Texas, (b) states other than Texas or (c) unknown. Said last known addresses were placed on Sun's books before December 31, 1954, and Sun has been unable to pay these claims since said date.
- (c) Employees' expenses and other miscellaneous minor fees and charges incurred in Texas and 20 other states by employees of Sun whose last known addresses on the books of Sun were either in (a) Texas, (b) states other than Texas or (c) unknown. Said last known addresses were placed on Sun's books before December 31, 1954, and Sun has been unable to pay these claims since said date.

- (d) Royalties on gas and oil production from lands in and rental on leases on lands in Texas, Louisiana, New Mexico and Mississippi, payable to various persons whose last known addresses on the books of Sun were either in (a) Texas, (b) states other than Texas or (c) unknown. Said last known addresses were placed on Sun's books before December 31, 1954, and Sun has been unable to pay these claims since said date.
- (e) Mineral proceeds on production from land and leases in Texas, Louisiana, New Mexico and Mississippi payable to various persons whose last known addresses on the books of Sun were either in (a) Texas, (b) states other than Texas or (c) unknown. Said last known addresses were placed on Sun's books before December 31, 1954, and Sun has been unable to pay these claims since said date.
- (f) Dividends on the common stock of Sun payable to persons whose last known addresses on the books of Sun were in Texas. Said last known addresses were placed on Sun's books before December 31, 1954, and Sun has been unable to pay these claims since said date.
- (g) Deductions from wages for the purchase of war bonds payable to employees hired in Pennsylvania whose last known addresses were in Texas. Said last known addresses were placed on Sun's books before December 31, 1954, and Sun has been unable to pay these claims since said date.
- (h) Cash, the exact nature of the claim being unknown, payable by Sun through its mid-continent division office in Tulsa, Oklahoma to persons whose last

known addresses on the books of Sun were in Texas. Said last known addresses were placed on Sun's books before December 31, 1954, and Sun has been unable to pay these claims since said date.

- (i) Stock dividends for which stock script certificates for fractional shares of capital stock of Sun were issued in the name of stockholders whose last known addresses on the books of Sun were in Texas. Said last known addresses were placed on Sun's books before December 31, 1954, and Sun has been unable to pay these claims since said date.

Sun attempted to make payment of the foregoing claims as follows:

1. In the cases of (a) wages and (b) employees' expenses, fees, and charges, by hand delivery of checks, if possible, or by mailing a check to the last known address. The checks were either (a) not delivered, (b) returned to the company or (c) never presented for payment.
2. In the case of (a) supplies purchased and services rendered, (b) royalties on gas and oil production and (c) cash dividends on common stock, by mailing checks to the last known address of the person entitled, if an address was known. The checks were either (a) not delivered, (b) returned to the company or (c) never presented for payment.
3. In the case of unclaimed payments for deductions from wages and uncashed checks issued by the Company in Tulsa, Oklahoma, the nature of the underlying transaction being unknown, Sun's records do not now reflect what efforts were made to attempt payment of these claims.
4. In the case of unclaimed stock dividends, for which stock script certificates for fractional shares were issued,

by mailing the stock script certificates to the last known address of the shareholder, all of which certificates were returned undelivered and are now in the possession of Sun and are held at their principal executive office in Philadelphia, Pennsylvania.

Follow-up efforts by Sun, particularly in the case of cash dividends and stock script certificates, were unsuccessful in locating the person entitled.

New Jersey resists the claim of Texas on the ground that in the face of these conflicting claims by several states the unclaimed property held by Sun which is subject to the New Jersey law can have its situs as unclaimed personal property for escheat or custodial purposes only in the fixed and permanent location of the corporation, which in this case is its domicile in New Jersey. New Jersey contends that neither Texas, Pennsylvania nor Florida has a superior claim to escheat or take custody of the funds in the light of the factual situation presented.

New Jersey's claim is based upon Articles 2 and 3 of Chapter 37, Title 2A, New Jersey Statutes (N.J.S. 2A:37-11 *et seq.*). Article 2 provides that where the owner of any personal property within the State has been unknown for 14 years or when his whereabouts has been unknown for 14 years or when the property has been unclaimed for 14 years, the property shall escheat to the State. Article 3 provides for the custody of money's payable as dividends, interest, wages and other general cash obligations to unknown persons or persons whose whereabouts have been unknown for 5 successive years or which have remained unclaimed for said period. Notice of the taking for custody is mailed to the last known address of the owner and the Attorney General of another state if the address is in another state. If the property is not claimed within two years after notice, it is escheated, but may be reclaimed

with interest at 2% within 7 years after date of entry of escheat judgment by a claimant entitled thereto who did not have actual knowledge of the action for escheat.

Texas claims the property is subject to escheat only in Texas on the grounds that it is personal property held within Texas or held without Texas for a person or beneficiary whose last known residence was in Texas and because of the business operations conducted by Sun in the State of Texas.

Pennsylvania claims on the grounds that the property is within or subject to the control of Pennsylvania because Sun presently has its principal executive office in Pennsylvania and conducts extensive business operations in Pennsylvania.

Florida claims a small number of the items of unclaimed property involved on the grounds the claims were payable to some persons whose last known address was in the State of Florida.

By order of this Court, dated February 25, 1963, the Honorable WALTER A. HUXMAN was appointed Special Master.

After a preliminary conference with the Master on April 18, 1963 at Topeka, Kansas the parties stipulated in writing so much of the facts as was possible to expedite the proceedings. The parties submitted briefs, and oral argument was presented to the Master in Topeka, Kansas on October 10, 1963. No testimony was taken. At the oral argument New Jersey offered in evidence, for the record, a copy of the report by Sun to Texas on which this action is predicated and certified copies of four judgments of the Superior Court of New Jersey in favor of New Jersey against Sun for custody and escheat of intangibles not involved in this action. The offer of this

evidence was not objected to by any of the other parties in the action. Nevertheless, the Master rejected the offer by New Jersey.

The Master has submitted his report and it has been ordered filed by the Court.

Summary of Argument

Sun Oil Company (Sun), incorporated in New Jersey, does business in New Jersey and in other states and foreign countries. In September, 1961, New Jersey commenced an action under its Custodial Escheat Statute to take for safekeeping various unclaimed wages, dividends and other general cash obligations held by Sun for more than five years. Thereafter, in November, 1961, the State of Texas (Texas) enacted an escheat law calling for a report of all unclaimed property held for 7 or more years which may be subject to escheat by that state. Pursuant thereto Sun filed its report with Texas of unclaimed intangible obligations which became the subject of this action.

The report shows nearly two thousand separate intangible obligations between 7 and 40 years of age owed by Sun to persons whose last known address was in Texas, whose last known address was in states other than Texas and whose last known address was unknown on the books of Sun. The obligations included unclaimed cash dividends on common stock of Sun, unclaimed wages, stock dividends and various other general obligations of the corporation.

This action was commenced by the State of Texas to claim a prior right to the intangibles over the conflicting claims of New Jersey, the domicile of Sun, as well as Pennsylvania, the state where Sun presently maintains its principal executive offices. The State of Florida intervened claiming the right to escheat certain obligations to persons who, seven or more years ago, had a last known address in Florida.

At common law property which had become ownerless was taken by the sovereign by the doctrine of *bona vacantia*. The escheat by the state of ownerless property is an outgrowth of this doctrine. This doctrine applies to intangible as well as tangible personal property which is taken by the state when such property has remained unclaimed for a sufficient period of time as to become presumptively without an owner. Note, *Origins and Development of Modern Escheat*, 61 Col. L. Rev. 1319, 1332 (1961).

The issue in this case is to determine which state of those claiming the property in this action has the prior or superior right to claim such property. In recommending an answer to this question the Master applied the common law doctrine of *mobilia sequuntur personam* in order to find the situs of the property. Under this doctrine the situs of personal property is deemed to be at the domicile of the owner. The Master then erroneously confused residence with domicile and then equated "last known address" on the books of Sun with residence of the creditor. Thus the Master recommended several erroneous propositions of law, namely, that Texas has exclusive jurisdiction to escheat intangible property "owned by persons whose last known residence or address was in Texas" (emphasis added) and that no state has power to escheat the property held by Sun for persons "who left no last known residence or address." See p. 20, Report of the Special Master. These conclusions followed the reasoning that situs of the property is in Texas or some other state where the creditor had his last known address, and that the situs of the obligation is not where the corporate debtor is located.

But, the doctrine of *mobilia sequuntur personam* is inapplicable here because there is no evidence in this case to establish the domicile of the persons to whom Sun owes these intangible obligations. To establish domicile,

residence in fact must be shown coupled with the purpose to make the place of residence one's permanent home. *Texas v. Florida*, 306 U. S. 398 (1939).

Sun's report to Texas establishes clearly that in many cases the last known address could not have been a place of residence. For example, the report filed by Sun shows that the last known address of many creditors was a post office box or a mailing address in care of a bank or some company. There was no proof introduced of any kind to show that any one last known address was actually a home or residence, and there was no stipulation of fact describing the nature of any place whose address was shown on the books of Sun.

Assuming that personal property follows the domicile of the creditor, the fact that Sun was unable to make payment of the obligation to the creditor at that last known address tends to prove that such address is not the present domicile of the creditor, that is, is not the permanent dwelling place of the creditor. There is, in fact, no proof that the creditor is alive today; nor is there any proof that, if he died, he left heirs or who his heirs may be or where they may live. For this reason we say the property is ownerless; the property may be escheated because it has no owner; and until an owner appears or is found, we cannot know his domicile.

Thus, the taking here must be from the obligor, the holder of ownerless property, and the last known address must be rejected as a basis for the primary exercise of jurisdiction to take custody or to escheat ownerless property. See: *State v. American Sugar Refining Co.*, 20 N. J. 286, 119 A. 2d 767 (1956); *In re Merschefrend's Estate*, 283 App. Div. 463, 128 N. Y. S. 2d 738 (App. Div. 1954), *aff'd*, 8 N. Y. 2d 1093, 170 N. E. 2d 902 (Ct. of App. 1960), *cert. denied*, 365 U. S. 842 (1961); *In re Rapoport's Estate*,

317 Mich. 291, 26 N. W. 2d 777, 782 (Sup. Ct. 1947), *cert. denied sub nom, California v. Michigan Bd. of Escheats*, 332 U. S. 764 (1947); *In re Hull Copper Co.*, 46 Ariz. 270, 50 P. 2d 560, 563, 101 A. L. R. 664 (Sup. Ct. 1935).

In taking ownerless property from a corporation, not entitled to keep said property, the state that should have the prior or superior right to the taking is the state of incorporation. That state is the domicile of the corporation. The general obligations of the corporation always have their permanent situs in the state of incorporation. This rule provides certainty and simplicity in the application of escheat laws where there are conflicting claims among states. The corporation can always be sued in its state of incorporation. This is the most convenient rule for the corporation, involving a minimum of expense in filing a report of escheatable funds in one state and in not being subject to multifold actions for the escheat of small but numerous obligations owed to persons whose addresses may be located in many states. We respectfully submit that these contentions are supported by the report filed in this case showing approximately two thousand separate obligations totalling less than \$40,000, averaging less than \$20.00 per item. See p. 8, par. XVII, Report of the Special Master.

Moreover, it is noted that under the Escheat Statute of Texas upon which this action is based Texas is not entitled to any of the funds. The Texas Statute by its very terms applies to personal property held within the State of Texas and to personal property which is held "without the State for a person or beneficiary whose last known residence was in this State." Article 3272a, Section 1(b), Title 53, Vernon's Civil Statutes of Texas (emphasis added).

The Attorney General of Texas has recognized that the Texas statute lays claim to personal property held outside of the State of Texas only for persons "whose last known residence" was in Texas. See Brief on Motion of Texas for Leave to File Bill of Complaint, p. 11.

The stipulation of facts indicate that the property in question is outside of Texas. Where obligations are unclaimed for a period of four years, they are no longer treated on Sun's books as obligations but are taken into income, and the corporation exercises dominion of ownership over the property. See pages 13 and 14, Report of the Special Master. Under the rule that the situs of property is at its owner's place of domicile, the property in question is in New Jersey, the corporation's domicile. The property has now become part of Sun's mass of intangible assets.

It is immaterial that some checks had been issued at one time on a bank in Texas in attempted payment of the original obligations. A check that is unpaid is not considered payment of an obligation. Therefore, the original obligation remains unpaid and is the intangible here involved which is held by Sun as part of its mass of property.

ARGUMENT

POINT I

As the state of incorporation of Sun, New Jersey has the superior right to take ownerless intangible property held by Sun, and no other state can establish that it is the domicile of the persons, if any, who may be entitled to the property.

A. Neither Texas nor any other state has proved that it is the place of domicile or residence of the persons to whom Sun's obligations were originally payable.

In his recommended conclusions of law, the Master stated:

"Inherent in the power to escheat is the location of property within the borders of the jurisdiction seeking to exercise such power." P. 18.

In trying to locate the property subject to this action the Master considered that the property followed the creditor and that:

"The last known address of the creditor as appearing on the books of the debtor corporation is adequate and sufficient to establish the residence of the owner of the intangible property for escheat purposes." P. 20.

It is both factually and legally incorrect to equate the last known address shown on the books of Sun with the domicile or residence of a creditor, both as to the present as well as at the time when the last known address was placed on Sun's books.

A detailed report has been filed with the Treasurer of Texas, "on which this action is predicated and from which the Stipulation of Facts was prepared." *Report of Special Master*, p. 18. Nothing in this report shows that the address of any creditor therein was the actual residence or domicile of any creditor. The addresses have been referred to in the Stipulation of Facts merely as the "last known address," not as a residence or domicile. The report conclusively shows many instances where the address could not have been a residence or domicile as illustrated by the following items shown on said report:

Item No.	Name of Owner, Insured Beneficiary or Annuitant This or Person Entitled to Report Property, and Identification Number or Reference If Available	Last Known Address of Owner	Date Property Became Payable, Demandable or Returnable with Owner	Date of Last Transaction	Value or Amount due Owner
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UNCASHED CHECKS

78.	Guidry, Chas. L.	P.O. Box 42 Carencro, La.	11/22/50	11/22/50	4.50
81.	Hite, George E. 3rd & Chas. S. Mallory Trustee under will of Robt. Mallory 417669	120 Broadway* New York 5, N. Y.	11/15/51	11/15/51	318.14
87.	Miller, Lillie 618303	Box 453 Seaside, Calif.	8/ 8/51	8/ 8/51	4.78
112.	Whitney, Lydia et al	c/o Philip Grossman—1st Wisc. Trust Co. Milwaukee, Wisc.	3/10/54	3/10/54	66.50

GULF COAST PRODUCTION DIVISION—
UNCLAIMED LEASE RENTAL CHECKS

3.	Jacobsen, Erik Holgen	Bank of America, Portola Branch, San Francisco, Cal.	11/ 6/41	11/ 6/41	10.00
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4.	Jacobsen, Mrs. Marian R., Jacobsen, Josephine L; Jacobsen, Carl E., & Jacobsen, Dorothy L.	Bank of America, Portola Branch, San Francisco, Cal.	11/11/42 11/19/42	20.00
5.	Walker, Inez M. & Husband, Walker, Warburton W.	Midway National Bank of St. Paul, St. Paul, Minn.	5/16/40	21.20
59.	House, Wilson & House	604 Dallas Bank & Trust Co. Bldg., Dallas, Texas	12/2/39	8.91

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GULF COAST PRODUCTION DIVISION—
UNCLAIMED OIL AND GAS PURCHASE
ROYALTY CHECKS

UNCLAIMED CASH DIVIDENDS ON
COMMON STOCK

85.	Baker, B. B.	P.O. Box 352, Greggton, Tex.	9/10/54 12/10/54	.50
86.	Hamilton, Mrs. Clara B.	c/o Sun Oil Co., Box 2880 Dallas, Texas	12/10/54	3.25
88.	Huckabee, John Jr.	Box 131, Selman City, Texas	6/10/54	.25

* This is a well-known office building near Wall Street, in New York City.

Domicile has been defined as follows:

"Domicile is a word used to express the legal relation existing between a person and a particular place or territory. Such relation arises by residence in the place or territory accompanied by intention to remain for an unlimited time, or it is created by operation of law as in case of birth, minority or marriage." *Keenan, A Treatise on Residence and Domicile*, p. 60 §26 (1934)

Domicile is a question of fact and intent. Residence in fact, coupled with the purpose to make the place of residence one's permanent home, are the essential elements of domicile. *Texas v. Florida*, 306 U. S. 398, 424 (1939).

As shown above, many of the last known addresses on the books of Sun could not have been a residence, much less a domicile, at the time the obligations accrued from 7 to 40 years ago. Nor is there any proof in the record of the present whereabouts of the persons whose names are listed on Sun's report to Texas. The fact that Sun has been unable to make payment of these obligations at the last known address strongly indicates that the persons are no longer at that address. A permanent removal from any such address, or a removal from an established domicile without a showing that the removal is temporary, would establish a change of domicile. *Burr's Adm'r. v. Hatter*, 240 Ky. 721, 43 S.W. 2d 26, 28 (Ct. Appeals Ky. 1931). In any case it is sufficient to say that the record is absolutely barren of any proof that the addresses were ever or are now the residence or domicile of the persons involved.

A comparable situation was presented in *State v. American Sugar Refining Company*, 20 N. J. 286, 119 A. 2d 767 (1956). There New Jersey sought to escheat unclaimed

dividends payable to stockholders of American Sugar Refining Company, a New Jersey corporation, with extensive business operations in the State of Massachusetts. Massachusetts intervened and asserted that under its escheat statute it had a superior right to those unclaimed dividends which were payable to persons whose last known address on the books of American was in Massachusetts. The Supreme Court of New Jersey denied the claim of Massachusetts. In its opinion the Court cited Judge TAFT's Opinion in *Conner v. Miller*, 154 Ohio St. 313, 96 N. E. 2d 13 (Sup. Ct. 1950) for the proposition that a last known address may or may not have been a place of residence, let alone a place of domicile. Massachusetts contended that stockholders whose last known address was in Massachusetts "were and are domiciled there and that Massachusetts as the domiciliary state has 'a superior right over that of New Jersey' to final escheat." 20 N. J. at 294 *et seq.*, 119 A. 2d 771 *et seq.* The New Jersey Supreme Court then said in language appropriate to the case at hand:

"The burden of establishing the Massachusetts domicile rests with Massachusetts as the intervening claimant; on the record before us we believe that it has not carried its burden. See *State v. Otis Elevator Co.*, 10 N. J. 504, 510 (1952); *State v. Otis Elevator Co.*, 12 N. J. 1, 20 (1953). Cf. *In re Seddon's Estate*, 110 Colo. 528, 136 P. 2d 285 (Sup. Ct. 1943); 28 *Notre Dame Law*, 416 (1953). The last known addresses which were recorded on the books of the corporation had little relation to domicile; as Judge Taft aptly remarked in *Conner v. Miller*, 154 Ohio St. 313, 96 N. E. 2d 13 (Sup. Ct. 1950), a last known address may or may not have been a place of residence, let alone a place of domicile. See *State v. Garford Trucking, Inc.*, 4 N. J. 346, 353 (1950); *State v. Benny*, 20 N. J.

238 (1955). In the instant matter many of the last known addresses were obviously places other than residences and the remainder may or may not have been residences. Decades have elapsed since the dividends were declared in 1935 or prior thereto (some were declared as early as 1891) without any claims by their owners or any information whatever as to their owners' whereabouts. It seems more than likely that those who may originally have had Massachusetts domiciles terminated them long ago (*cf. State v. Western Union Telegraph Co.*, 17 N. J. 149, 158 (1954)); in any event it can hardly be said that there was any realistic showing that the interested stockholders were and are domiciled in Massachusetts. Compare *Note, Escheat of Corporate Dividends*, 65 Harv. L. Rev. 1408, 1414 (1952):

" 'The first objection to escheat to the state where the shareholder lives is that by hypothesis it is unknown. Usually there is no way to tell whether the last known shareholder has died or sold his shares. Moreover, the current residence of even the last recorded owner may be unknown. Since a man who has remained in or near the same community can be more easily located than one who has moved a substantial distance, it is likely that the shareholder no longer resides in his old state. Thus there certainly seems no reason to assume that the state of the last known residence of the last known owner has any connection with the present shareholder. Indeed, it is even doubtful whether over a large number of cases the amounts escheated to the various states would be related to the number of shareholders residing in each state.'

"In furtherance of its contention that it has a superior right, Massachusetts asserts that it and not

New Jersey has 'an *in personam* jurisdiction over the owners of the dividends.' Its assertion assumes that the dividend owners were originally domiciled in Massachusetts and that a presumption may be indulged in as to the continuance of their domiciles in Massachusetts. But, as has already been indicated, the acknowledged circumstances support neither the basic assumption of domicile nor the presumption of continuance. The incontrovertible fact is that the only established connection between Massachusetts and the last known owners of the unclaimed dividends is that their last known mailing addresses, recorded many years ago on the books of the company, were somewhere in Massachusetts. Realistically viewed, that connection is hardly as significant as that of New Jersey, which as the state of incorporation, always has had the comprehensive power to deal in New Jersey with the relations between the corporation and its stockholders, both resident and non-resident. See *Merola v. Fair Lawn Newspaper Printing Corp.*, 135 N. J. eq. 152, 156 (E. & A. 1944); *Andrews v. Guayaquil & Quinto Railway Co.*, 69 N. J. Eq. 211 (Ch. 1905), affirmed 71 N. J. Eq. 76S (E. & A. 1906). Cf. *Standard Oil Co. v. State of New Jersey, supra.*"

- B. The rule of *mobilia sequunter personam* cannot be applied to place situs of the property in the state of last known address of the person to whom the property was payable.**

The rule of *mobilia sequunter personam* is that personal property has its situs at the domicile of the owner. *Blodgett v. Silberman*, 277 U. S. 1 (1928); *Baldwin v. Missouri*, 281 U. S. 586 (1930). The Master seems to have applied this rule as well as equitable principles to reach the conclusion (p. 33) that, "Justice would seem to require" that the situs of intangible property for escheat purposes "be

fixed at the residence of the creditor of such property. It is his property; it belongs to him. Ordinarily, he has in his possession evidence of such property."

But the rule cannot apply in the case at hand. It has been clearly demonstrated in Point A above that there is no proof in the record of either domicile or residence.

Following the conclusion that the situs of intangible property is fixed for escheat purposes at the residence or last known address of the creditor of such property, the Master was forced to conclude that where a last address is unknown no state could escheat the property held by Sun. The Master stated, at p. 34:

"The adoption of this rule would, of course, mean that no state could escheat property of creditors whose last address was unknown."

In the case at hand, many obligations of Sun are payable to persons whose addresses are unknown and are not shown on the books of Sun nor in the Report to Texas. Under the Master's concept this property could not be escheated by any state. Moreover, since we have established that last known address cannot be equated with residence or domicile, the whereabouts of all the claimants are now unknown and unproved in this action, and, by the Master's reasoning, none of the subject property could be escheated by any state.

The Master did recognize that although the property could not be escheated from Sun in any state, a state such as New Jersey could take custody of the property and hold same subject to the claim of a rightful owner. See p. 34. However, the Master's conclusion that the state does not have power to escheat for all time property held by a corporation and persons whose address or existence is unknown is contrary to established law. *Christianson v. King County*, 239 U. S. 356 (1915); *Hamilton v. Brown*,

161 U. S. 256 (1896); *Standard Oil Co. v. New Jersey*, 341 U. S. 428 (1951); *Security Savings Bank v. California*, 263 U. S. 282 (1923); *United States v. Klein*, 303 U. S. 276 (1938).

As stated by this Court in the *Standard Oil* case, *supra*, 341 U. S. at 438:

"Escheat is permitted against the persons whose addresses or existence is unknown * * *"

C. Where property is ownerless and where the residence or domicile of the persons last entitled thereto are unknown; the domicile state of the debtor has the superior right to escheat the unclaimed intangible obligations.

Ownerless personal property is subject to the sovereign power of appropriation. Property of this nature has been classified historically as *bona vacantia*.

Originally the doctrine of *bona vacantia* applied in the main to tangible personal property. By reason of changing economic conditions there has been a shift of emphasis in the application of this doctrine to items of intangible personal property which today tend to have a more important value than stray animals and shipwrecked cargoes. Note, *Origins and Development of Modern Escheat*, 61 *Col. L. Rev.* 1319, 1332 (1961).

No matter what place the historical development of the doctrine of *bona vacantia* may play in supporting the sovereign power of a state to dispose of unclaimed personal property, the underlying principle is that the property does not have an owner. In *Standard Oil Co. v. New Jersey*, 341 U. S. 428, 435, (1951) this Court stated:

"* * * We need not consider whether a state possesses inherent power for such legislation as to personality as the successor to a prerogative of royal sovereignty.

"As a broad principle of jurisprudence rather than as a result of the evolution of legal rules, it is clear that a state, subject to constitutional limitations, may use its legislative power to dispose of property within its reach, *belonging to unknown persons*." (Emphasis added).

Since the unclaimed intangibles involved in this action are deemed ownerless property, it is a mistake to consider such property as belonging only to the original creditor.

The Master recommended the conclusion (p. 19) that the debtor "has no proprietary interest in the intangible property." But the debtor does have possession of the property, and, by reason of the passage of time and statutes of limitation that may be applicable to escheat claims against the debtor, such possession may ripen into ownership. Although not subject to specific identification, the intangible obligations do exist as part of the mass of property owned by the debtor. See: *Anderson Nat. Bank v. Luckett*, 321 U. S. 233, 248 (1944). It is from amongst these intangibles that the claim must be paid, and it is in that mass where situs of the intangible can be found. As the court said in *Anderson National Bank, supra*, 321 U. S. at 248:

"As we have seen, a bank account is a chose in action of the depositors against the bank, which the latter is obligated to pay in accordance with the terms of the deposit. It is part of the mass of property within the state whose transfer and devolution is subject to state control."

The Master recognized that intangibles do not have a fixed physical presence in a given place. They are legal obligations, choses in action. The Master also recognized and recommended the conclusion of law that where prop-

erty was owned by persons who left no last known residence or address (p. 20), "Only New Jersey, the domiciliary residence of the debtor corporation has power and jurisdiction to require payment of the debts representing such property under its custodial statute."

We agree, to some extent, with this recommended conclusion of the Master with respect to property originally owned by persons who left no last known residence or address. We go further and say that New Jersey has the power not only to take custody of the property, but to escheat same. We contend that the same rule should apply to property owned by persons who left a last known address, where there is no proof that the address was the residence or domicile of the person, and it must therefore be concluded as a matter of fact that the residence and domicile of that person are unknown.

This rule is not unfair. The statutory procedure in New Jersey is such that the rights of all claimants are adequately protected. The action against Sun pending in the Superior Court of New Jersey was commenced under the Custodial Escheat Statute, N.J.S. 2A:37-29, *et seq.* Under this statute New Jersey takes custody of unclaimed intangibles held by the corporation consisting of dividends, interest, wages and other general cash obligations. *State v. Sperry & Hutchinson Co.*, 23 N. J. 38, 127 A. 2d 169 (1956).

After the funds are delivered to the State Treasurer for safekeeping, the Treasurer sends a notice by mail to the last known address of the person entitled and to the Attorney General of the state of such last known address. N.J.S. 2A:37-32. If the property is not claimed within two years after such notice is sent, it becomes subject to escheat. N.J.S. 2A:37-34. Thereupon, a further proceeding is commenced in the Superior Court of New Jersey to es-

cheat the property. N.J.S. 2A:37-36. Notice is again given by mail to the person entitled at his last known address and to the Attorney General of such state. N.J.S. 2A:37-37. Notice is also given by publication. N.J.S. 2A:37-37. After judgment of escheat is entered, a person entitled may, for a period of seven years thereafter, obtain repayment of the escheated funds plus 2% interest. N.J.S. 2A:37-40.

This reasonable and practical approach gives ample protection to all persons and states who may have a claim against the property. This rule supports a judgment herein in favor of New Jersey.

D. Convenience, economy and certainty compel the rule that the state of incorporation of the holder of ownerless property has the superior right to take such property.

As shown above, there are legal obstacles in reaching the conclusion that the state where a creditor had an address many years ago as shown on the books of a debtor corporation is the present situs of the property. Treating such state as the situs requires a finding that last known address constitutes domicile, or at least residence. That finding cannot be made as a matter of fact or logic.

Using last known address as the test is disadvantageous in a practical as well as legal sense. In the case at hand the property subject to escheat consists of 1,730 separate claims against Sun totalling \$26,461.65. Par. XVII, p. 8. The average claim is for approximately \$16.00. These claims are payable to persons whose last known address is in Texas, in many states other than Texas, or unknown. This means that under a last known address rule Sun would be required to file a report in each state that has an abandoned property law where any of Sun's creditors once had an address, and each of those states would have the right

to claim the property from Sun and subject Sun to a separate action for the escheat of same.

Added to this is the uncertainty of the last known address rule which would have to yield readily to the claims of several states where the creditor once actually resided, since actual residence would always be superior to last known address. Moreover, the state of domicile would be superior to the states of residence or last known address.

The advantages of a rule giving priority to the state of incorporation for escheat purposes are evident. The state of incorporation always has jurisdiction over the debtor. There need be only one report and one action for taking the property.

Most large corporations, like Sun, conduct business operations in many states in the United States. If every state should adopt a law providing for the disposition of unclaimed personal property, corporations will be required to keep extensive records and make annual reports to all states even though the state laws may have application to only an insignificant amount of property. The expense of keeping such records may be greatly out of proportion to the amount of unclaimed funds involved. With the increased activity in this field by many states the amount of unclaimed property that may be taken by any one state will be greatly diminished. The expense of taking will be greatly increased in proportion to the amount received in any one action.

The defects and disadvantages in a last known address rule are recognized in Note, *Escheat of Corporate Dividends*, 65 Harv. L. Rev. 1408, 1414:

"The first objection to escheat to the state where the shareholder lives is that by hypothesis it is unknown. Usually there is no way to tell whether the last known

shareholder has died or sold his shares. Moreover, the current residence of even the last recorded owner may be unknown. Since a man who has remained in or near the same community can be more easily located than one who has moved a substantial distance, it is likely that the shareholder no longer resides in his old state. Thus there certainly seems no reason to assume that the state of the last known residence of the last known owner has any connection with the present shareholder. Indeed, it is even doubtful whether over a large number of cases the amounts escheated to the various states would be related to the number of shareholders residing in each state."

Considering possible alternates to a rule preferring the state of incorporation, the aforesaid Note in the Harvard Law Review concludes as follows (Vol. 65 at 1419):

"The rationale for the escheat of abandoned property supports payment to the state of the holder rather than to the state of the last known owner. In cases in which more than one state may make a claim through the holder, the choice between them should be designed to minimize uncertainty and expense in the collection process, since the value of the dividends held by each party is so small. It should also be designed to eliminate the possibility of multiple escheat, since the injustice of this is far clearer than the equities of the rival governments. On this basis, funds held by corporations should escheat to the state of incorporation rather than to the state of the business situs."

The Master suggested that the equities do not favor the rule which gives priority to the state of incorporation. On page 37 of his report the Master said:

"Not much equity or fairness can be urged in favor of a rule fixing the situs of an absent owner's intangible property at the domiciliary residence of the debtor corporation for escheat purposes. Sun Oil Company has no property in New Jersey, no bank accounts or property of any kind. All its assets are at its principal office in Pennsylvania and at its division headquarters in Texas and other states where divisions are maintained. It would thus seem to be a rather farfetched and harsh fiction of law to say that all intangible property in this case is located at the domiciliary residence of the debtor corporation in New Jersey."

Here again the Master has erred, we respectfully submit. Not only is his reasoning unsound as a general proposition of law but it is contrary to the facts of this case.

Finding of Fact VIII on page 6 of the Master's report states:

"The Company operates or leases 688 service stations in the State of New Jersey, maintains 4 district offices and storage facilities there, and has a marine terminal and pipeline terminal at Newark, New Jersey."

This finding was taken from the stipulation of facts by the parties. It shows that Sun has substantial property and business operations in New Jersey. These business operations were stated in very general terms in the stipulation. And as indicated above, the state of incorporation is the place where the corporation is deemed to possess all of its mass of intangible assets. Certainly there is no question that the corporation is subject to suit in New Jersey. But all corporations are not subject to suit in all states of the union where creditors may have had their last known address.

E. Obligations for corporate stock and dividends have a situs only in the state of incorporation for escheat purposes.

No argument of any substance can be made against a determination that unclaimed shares of corporate stock and dividends payable on corporate stock have their situs only in the state of incorporation.

It is settled law that, absent a permissive statute in the state of incorporation, shares of stock have their situs only in that state for seizure in execution, attachment and garnishment. See: Note: *Corporations—Situs of Corporate Stock*, 19 Va. L. Rev. 386 (1933); Note: *Situs of Shares of Stock*, 33 Harv. L. Rev. 485 (1925); Pomerance, *The Situs of Stock*, 17 Cornell L. Q. 43 (1931).

"The fundamental rule stated in an earlier section that the situs of shares of stock of a corporation is at the domicile of the corporation was likewise, prior to the Uniform Stock Transfer Act, the majority rule in execution, attachment and garnishment; and it was usually held that the situs of shares for the purposes of those proceedings was in the state under whose laws the corporation was created, and in that state alone, in the absence of some statutory provision or other controlling circumstance which operated to give an additional or secondary situs. In accordance with the general rule, statutes permitting the attachment or garnishment of, or the levy of execution upon, shares of stock, though general in their terms, are usually held to apply to domestic corporations only, at least in the absence of anything showing a contrary intention on the part of the legislature." Vol. 11, *Fletcher, Cyclo-pedia Corporations*, (Perm. Ed.), p. 155, §5106.

It is generally recognized that the stock of a corporation has a situs only in the state in which the corporation was

created for the purpose of jurisdiction to adjudicate rights of ownership or claims of title in respect thereto. *Nixon v. Nixon*, 348 S. W. 2d 434, 436 (Texas Ct. Civ. App. 1961).

In *Jellenik v. Huron Copper Mining Co.*, 177 U. S. 1 (1900) the Court stated at page 13 of 177 U. S.:

“ * * * But we are of opinion that it is within Michigan for the purposes of a suit brought there against the Company—such shareholders being ~~made~~ parties to the suit—to determine whether the stock is rightfully held by them. The certificates are only evidence of the ownership of the shares, and the interest represented by the shares is held by the Company for the benefit of the true owner.”

Under the facts of the case at bar where the corporation has been unable to make delivery of certificates for fractional shares of stock to the stockholder entitled at his last known address or at any address by follow-up procedures, it must be concluded that the whereabouts of the stockholder is unknown. Under these circumstances, unclaimed shares of stock in a corporation and dividends payable thereon can have a situs only in the state of incorporation.

Although there are only fractional shares of stock resulting from stock dividends involved in this action, the general rule of situs of shares of stock is applicable to these fractional interests.

F. The intangibles involved are not claims on checks and do not have a situs at the bank on which the check was drawn.

The intangibles involved in this action are not claims on checks, that is to say, they are not claims against the bank upon whom the checks were drawn. Nor are these obliga-

tions claims against Sun on the checks themselves; the claims are on the underlying obligations for which the checks were drawn.

This point is made because on page 21 of his report the Master referred to the "intangibles" as:

"* * * (a) Checks sent to persons whose last known address was in Texas; (b) checks to persons whose last known address was in states other than Texas; and (c) checks to persons whose last known address is unknown * * *"

As stipulated by the parties, the property here involved consists of claims for wages, amounts payable for supplies purchased and services rendered, amounts payable for employees' expenses and other minor fees and charges, amounts payable as royalties on gas and oil production from lands and rental on leases on lands, fractional mineral interests, cash dividends on common stock, deductions from wages for purchase of war bonds, cash claims for which checks were issued in Oklahoma the exact nature of which are unknown, and stock dividends for which scrip certificates for fractional shares of stock were issued. In an attempt to make payment of the claims for cash, Sun issued checks in the name of the person entitled. These checks were either undelivered, mailed and returned undelivered or never presented for payment.

The unilateral action of issuing checks as well as the bookkeeping and banking transactions by Sun are of no consequence in determining Sun's liability for the unclaimed intangibles here involved. *Standard Oil Co. v. New Jersey*, 341 U. S. 428, 437 (1951).

The issuance of a check which may or may not have been delivered to the person entitled did not convert the cash

claim for wages, dividends and other obligations into a claim for cash on a check.

It is an established principle of law that a check of a debtor, received for a debt, is not payment if not itself paid except in those cases where it is positively agreed to be received as payment. 70 C. J. S., *Payment*, §24, p. 233; *State v. United States Steel Corp.*, 12 N. J. 38, 45, 95 A. 2d 734, 737 (1953). Here there is no proof at all that the creditor agreed to treat the mere issuance of a check as payment of the underlying obligation.

Thus, the fact that a check was drawn on a bank in Texas does not mean that the obligation is in Texas. The debtor corporation may no longer be doing business in Texas and the creditor may no longer reside there. It is, therefore, unwarranted to establish a rule that fixes the situs of property for escheat purposes in the state where a bank is located on which a check was once drawn many years ago.

POINT II

The complaint of Texas should be dismissed because the personal property claimed is outside of Texas and the Texas Escheat Law applies only to such property if held for a person "whose last known residence" was in Texas.

Texas claims a superior right to escheat the unclaimed property here involved under Articles 3272 and 3272a, Title 53, Vernon's Civil Statutes of Texas wherein it is provided *inter alia*:

"Article 3272. When estates shall escheat.—If any person die seized of any real estate or possessed of any personal estates, without any devise thereof, and

having no heirs, or where the owner of any real or personal estates shall be absent for the term of seven years, and is not known to exist, leaving no heirs, or devisee of his estates, such estate shall escheat to and vest in the State. Where no will is recorded or probated in the county where such property is situated within seven years after the death of the owner it shall be prima facie evidence that there was no will, and where no lawful claim is asserted to, or lawful acts of ownership exercised in, such property for the period of seven years, and this has been proved to the satisfaction of the court, it shall be prima facie evidence of the death of the owner without heirs. * * *

"Article 3272a, Personal Property Subject to Escheat

Report by holder of personal property.

'Section 1. Every person holding personal property subject to escheat under Article 3272 of Title 53, Revised Civil Statutes of Texas, 1925, at the time of the effective date of this Act, shall, within sixty (60) days thereafter, file a report thereof with the State Treasurer, as specified in section 2 of this Article. Every person who holds personal property which becomes subject to escheat under Article 3272 after the effective date of this Act, shall, within sixty (60) days thereafter, file a report thereof with the State Treasurer, as specified in Section 2 of this Article; provided that after one report has been made under this Article by any person, subsequent reports by such person may be made on an annual basis on or before May 1st of each year. . . .

'(b) The term "*personal property*" includes, but is not limited to, money, stocks, bonds and other securities, bills of exchange, claims for money or indebtedness and other written evidences of indebtedness, dividends, deposits, accrued interest, purchase payments, sums payable on certified checks, certificates of membership in a corporation or association, amounts due and payable under the terms of any insurance policy, security deposits, unclaimed refunds and deposits for utility or other services, funds to redeem stocks, and bonds, undistributed profit, dividends, or other interests, production and proceeds from oil, gas and other mineral estates, and *all other personal property* and increments thereto, *whether tangible or intangible, and whether held within this State, or without the State for a person or beneficiary whose last known residence was in this State.* (Emphasis added.)

'(c) The Term "subject to escheat" shall include personal property presumed to be subject to escheat by the prima facie conclusions contained in Article 3272, including all personal property (1) of which the existence and whereabouts of the owner are unknown and have been unknown to the holder for more than seven (7) years and (2) on which, from the knowledge and records of the holder it appears that no claim or act of ownership has been asserted or exercised during the past seven (7) years and (3) on which no will of the last known owner has been recorded or probated in the county where the property is situated within the past seven (7) years.' "

Not only is Texas unable to assert a superior right to the claims, but it cannot assert any right unless it proves that the persons entitled are residents of Texas. The

Texas statute by its very terms is applicable only to property outside the state when owned by *residents* of Texas who actually or presumptively died without heirs or devisees. Note: "Conflicting Claims Under Modern Escheat Statutes", 16 Sw. L. J. 660, 664.

Texas commenced this action by filing a Motion for Leave to File Bill of Complaint. In the Brief in support of said motion, at page 11, it is stated that the courts of Texas have not yet construed the statute in question but that the Attorney General of Texas has rendered an opinion interpreting the statute, Attorney General's Opinion No. WW-1180 (1961). The Attorney General is quoted as saying:

"The Legislature, in our opinion, intended by this definition of personal property to include all personal property subject to escheat which is held in this state, regardless of the last known residence of the beneficiary or person for whom the property is held, and that held outside the state for a person or beneficiary whose last known residence was in this state."

Thus the Attorney General of Texas has recognized that where property is held outside of Texas the Texas Escheat Law is applicable to that property only on a showing that it is held for a person or beneficiary "whose last known residence" was in Texas. As we have shown above, the property in question has been incorporated into the general mass of intangibles held by Sun which are present at Sun's place of domicile, its state of incorporation.

The wording of the Texas Statute brings the claim of Texas within the construction placed on a similar Arizona statute in *In Re Hull Copper Co.*, 46 Ariz. 270, 50 P. 2d 560, 101 A. L. R. 664 (1935). There Arizona claimed that the distributive share of the assets of a dissolved Arizona corporation payable to persons who were unknown or whose

whereabouts were unknown had escheated to the State of Arizona under a provision of the Arizona law which is as follows:

“* * * §4304. *When property escheats.* If any person die, seized or possessed of any property without any devise or bequest thereof, and having no heirs, or where the owner of any property, without any devise or bequest thereof, and having no heirs, shall be absent for the term of seven years, and is not known to exist, such estate shall escheat to and vest in the state.”

Although the property was declared escheatable under a provision of Arizona's Constitution, it was held not subject to escheat under the statute because the persons entitled to the distributive shares were not Arizona residents. On page 563 of 50 P. 2d the Court held that property would escheat only if the owners had been residents of Arizona before dying without heirs or becoming absent from the state for 7 years saying:

“We consider then the claim of the state. This, as we have stated, was based on the theory that the owners of the stock in question were persons falling within the class described in section 4304, *supra*. If the claim of the appellees cannot be sustained, still less, we think, can that of the state, as set forth in its pleadings, be upheld. In the first place, the only evidence as to the residence of these stockholders is that they were nonresidents of the state of Arizona. In such case, since the property in question was personal in its character, it would ordinarily follow the residence of the owner, and an escheat proceeding in this state would not lie. This is apparently recognized by the statute, for it refers to the owner being ‘absent for

the term of seven years,' which certainly implies absence from the state of Arizona, and therefore residence in this state. In the second place, there is no showing whatever as to whether the missing stockholders have any heirs. While this, of course, may be established by circumstantial evidence, we think that some showing on this point is required. 10 R. C. L. 614. We are of the opinion that the state has failed to show the money in question has escheated to it under the provisions of sections 4304-4310, supra."

Before the Texas Statute can be held to have any application to the property here involved, it must be established that the persons entitled thereto were in fact residents of the State of Texas. This has not been proved in the case at bar. Thus, under Texas law, the complaint should be dismissed.

POINT III

Procedural Exception and Argument

The copy of the report of Sun to Texas on which this action is predicated and the certified copies of the judgments entered in the New Jersey courts should have been admitted in evidence by the Master and made a part of the record.

At the hearing before the Master New Jersey offered in evidence five exhibits. The exhibits were numbered one to five for identification.

Exhibit #1 was a certified copy of a judgment dated July 19, 1954, obtained by the State of New Jersey against Sun Oil Company. The judgment provided for the custody for safekeeping of unclaimed wages aggregating \$4,667.01 and unclaimed dividends on capital stock aggregating \$1,644.71.

Exhibit #2 was a certified copy of a judgment dated February 28, 1955, providing for the escheat of unclaimed dividends on preferred and common stock aggregating \$866.20 and unclaimed stock dividends, represented by script certificates for fractional shares, aggregating 1.37 shares of capital stock.

Exhibit #3 was a certified copy of a judgment dated June 12, 1955, providing for the custody for safekeeping of unclaimed wages aggregating \$3,816.01 and unclaimed dividends on capital stock aggregating \$3,332.10.

Exhibit #4 was a certified copy of a judgment dated July 28, 1959, providing for the custody for safekeeping of unclaimed wages aggregating \$3,115.08 and unclaimed dividends on capital stock aggregating \$378.86.

These exhibits were offered to show that New Jersey's Courts had adjudged property of the nature involved in this action to be subject to New Jersey's custodial and escheat laws.

Exhibit #5 was a copy of the report of Sun to Texas upon which this action is predicated. The report contained the names of between 1,800 and 2,000 people, the amounts payable to them, the date said amounts became payable, and their last known addresses if known.

This exhibit was offered to complete the record by presenting the full picture of the information available relative to these claims. The report shows that many of the addresses could not support a conclusion that they represent the named person's domicile. There were many business addresses, post office box addresses and addresses in care of another person. The report further shows that the claims became payable from at least 7 to more than 40 years ago.

"No objection was made to the offer of these exhibits to be made part of the record. Nevertheless, the Master rejected the offer. At page 18 of his Report the Master states that the judgments were rejected, "because such exhibits were deemed immaterial." His rejection of the Report filed with Texas was stated as follows:

"Exhibit 5 was a full copy of the detailed report filed with the Treasurer of Texas on which this action is predicated and from which the Stipulation of Facts was prepared. This offer was rejected on the ground that the numerous individual items making up the voluminous report served no useful purpose and would only confuse what was clearly set out in the agreed Stipulation of Facts. Exceptions were allowed to the Master's ruling."

The attitude of our federal courts sitting without a jury on the admissibility of evidence appears in *Builders Steel Co. v. Commissioner of Internal Rev.*, 179 F. 2d 377 (8 Cir. 1950). There the Circuit Court vacated a decision of the Tax Court and granted petitioner a new trial because the Tax Court erroneously excluded competent and material evidence. The Circuit Court, holding that at a non-jury trial or hearing evidence of even doubtful admissibility should be admitted to permit the Court on review to make an end to the case, stated at page 379 of 179 F. 2d.

"In the trial of a nonjury case, it is virtually impossible for a trial judge to commit reversible error by receiving incompetent evidence, whether objected to or not. An appellate court will not reverse a judgment in a nonjury case because of the admission of incompetent evidence, unless all of the competent evidence is insufficient to support the judgment or unless it affirmatively appears that the incompetent evi-

dence induced the court to make an essential finding which would not otherwise have been made. *Thompson v. Carley*, 8 Cir., 140 F. 2d 656, 660; *Doering v. Buechler*, 8 Cir., 146 F. 2d 784, 786; *Grandin Grain & Seed Co. v. United States*, 8 Cir., 170 F. 2d 425, 427.

On the other hand, a trial judge who, in the trial of a nonjury case, attempts to make strict rulings on the admissibility of evidence, can easily get his decision reversed by excluding evidence which is objected to, but which, on review, the appellate court believes should have been admitted. In the case of *Doynelly Garment Co. v. National Labor Relations Board*, 8 Cir., 123 F. 2d 215, 224, we stated our views upon this subject as follows: " * * * We think that experience has demonstrated that in a trial or hearing where no jury is present, more time is ordinarily lost in listening to arguments as to the admissibility of evidence and in considering offers of proof than would be consumed in taking the evidence proffered, and that, even if the trier of facts, by making close rulings upon the admissibility of evidence, does save himself some time, that saving will be more than offset by the time consumed by the reviewing court in considering the propriety of his rulings and by the consequent delay in the final determination of the controversy. One who is capable of ruling accurately upon the admissibility of evidence is equally capable of sifting it accurately after it has been received, and, since he will base his findings upon the evidence which he regards as competent, material and convincing, he cannot be injured by the presence in the record of testimony which he does not consider competent or material. Lawyers and judges frequently differ as to the admissibility of evidence, and it occasionally happens that a reviewing court regards as admissible evidence which was re-

jected by the judge, special master, or trial examiner. If the record on review contains not only all evidence which was clearly admissible, but also all evidence of doubtful admissibility, the court which is called upon to review the case can usually make an end of it, whereas if evidence was excluded which that court regards as having been admissible, a new trial or rehearing cannot be avoided. We say this in the hope of preventing a repetition of what occurred in the case now before us, and to obviate any misunderstanding as to what the attitude of this Court is with respect to the taking of evidence in a hearing before a special master or a trial examiner.' "

The judgments were offered herein to prove that New Jersey Courts had previously adjudicated New Jersey's right to claim property similar to that in question. Reference was made in the Stipulation of Facts (par. xviii, p. 16) to payments made by Sun to various states in previous years for unclaimed property, including New Jersey. The judgments in question merely detailed the basis for such payments which had been referred to in said Stipulation of Facts.

We respectfully submit also that the Report of Sun to Texas should have been admitted in evidence. The Report was described by the Master as the "detailed report filed with the Treasurer of Texas on which this action is predicated and from which the Stipulation of Facts was prepared." This Report was not rejected on the grounds of irrelevancy or immateriality, but simply because the Master felt that the Report "served no useful purpose and would only confuse what was clearly set out in the agreed Stipulation of Facts" (p. 18).

As stated above, no party to the action objected to any of the exhibits offered by New Jersey.

We respectfully submit that the detailed report in question will help this Court understand certain parts of the Stipulation of Facts which were expressed in general terms.

We are submitting with this brief copies of the aforementioned judgments and of the report of Sun to Texas; and we respectfully urge that this Court consider same as part of the record. We respectfully submit that Sun's report to Texas will assist the court in evaluating the practical consequences of its decision in this case, which is one of the considerations urged by New Jersey for the rule expoused herein.

CONCLUSION

For the foregoing reasons we respectfully urge that this Court should enter judgment determining that the ownerless, intangible obligations held by Sun are subject to the superior right of New Jersey, as the state of incorporation, to take such property under its Custody and Escheat Laws and that neither Texas, Pennsylvania nor Florida has established a superior right to such intangibles.

Respectfully submitted,

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Of Counsel and on the Brief:

THEODORE I. BOTTER,
First Assistant Attorney
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PROOF OF SERVICE

I, CHARLES J. KEHOE, Deputy Attorney General of the State of New Jersey, one of the attorneys for defendant, State of New Jersey, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 13th day of February, 1964, I served copies of the Exceptions by the State of New Jersey to the Report of the Master and Supporting Brief on each of the other parties to this action by depositing copies in a United States post office or mail box, with first class postage or air mail postage prepaid, and addressed to:

- (1) Honorable Waggoner Carr,
Attorney General of Texas
Box R, Capitol Station,
Austin, Texas 78711.
- (2) Honorable Walter E. Alessandrini,
Attorney General of the Commonwealth of Pennsylvania,
State Capitol,
Harrisburg, Pennsylvania.
- (3) Honorable Richard W. Ervin,
Attorney General of Florida,
Capitol Building,
Tallahassee, Florida.
- (4) Mr. Henry A. Frye,
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CHARLES J. KEHOE,
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**IN THE
Supreme Court of
The United States**

October Term, 1963

No. 13 Original

STATE OF TEXAS,
v.
STATE OF NEW JERSEY, ET AL.,
and
STATE OF FLORIDA,
Plaintiff,
Defendants,
Intervenor.

REPLY BRIEF OF THE STATE OF FLORIDA

**JAMES W. KYNES, Attorney General,
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REPLY BRIEF OF THE STATE OF FLORIDA

Exceptions to the Special Master's Report.—The states of New Jersey and Texas have filed exceptions to the Report of the Special Master filed herein. No exceptions appear to have been filed by the states of Pennsylvania and Florida, or by the defendant Sun Oil Company.

The Special Master, Honorable Walter A. Huxman, found that the situs of intangible personal property embraced in the return of unclaimed and abandoned intangible personal property, filed by the Sun Oil Company, one of the defendants herein, with the State of Texas, was the state or country wherein the payee or person entitled thereto was domiciled or had his permanent residence, and that the domicile or residence of such person is presumed to be the place or location mentioned on the books and records of the said Sun Oil Company, and in said return filed by the said defendant Sun Oil Company with the State of Texas, unless and until evidence is offered showing a change of the said domicile or residence. Under the holding of the Special Master the intangibles mentioned in the said return filed with the State of Texas have their situs at the domicile or permanent residence of the person entitled thereto, that is, at the domicile or residence of the creditor, not that of the debtor.

Contention of the State of Texas.—The State of Texas has excepted to the said report and holding of the Special Master, contending that the proper rule is not the one

announced and followed by the Special Master, and that intangible personal property have no fixed situs, and that the ultimate rights of states having contact with the debtor, creditor, or the subject matter from which intangible obligations arise depend upon the application of the principles of conflicts of laws. That royalties, rentals and mineral proceeds derived from oil, gas and mineral lands located in the State of Texas are subject only to the escheat and custody laws of the State of Texas. That unpaid obligations arising out of Texas contracts for services, supplies, expenses, etc., have their situs in Texas, not in the state or states of the domicile or residence of the debtor or creditor when elsewhere than in the State of Texas.

Contention of the State of New Jersey.—The State of New Jersey has excepted to the said Master's Report and holding of the Special Master, contending, like Texas, that the proper rule is not the one announced and followed by the Special Master, but that the state of incorporation is the state entitled to escheat or take custody of unclaimed and abandoned properties and obligations held by the corporation for its creditors, employees, stockholders, etc. That the state of the residence or domicile of the debtor, not that of the creditor, has the prior and superior claim to the abandoned and unclaimed properties in the hands of the debtor.

The State of Florida, believing that the Special Master has reached a correct conclusion, has accepted the report

and conclusions of the Special Master, and has filed no exceptions thereto.

It appears from page four of the Special Master's Report that the *State of Pennsylvania*, one of the defendants herein, contended before the Special Master that in the case of a corporation holding unclaimed or abandoned intangible personal property the state wherein the principal office and activities of the corporation are carried on has the prior and superior right to such unclaimed or abandoned personal property.

SUMMARY OF FLORIDA'S REPLY ARGUMENT

In those cases where two or more states claim the right to escheat or take possession of the same intangible personal property on the ground that such property is unclaimed or abandoned property within the purview of their escheat or custodial statutes, under existing court decisions claims for such escheat or custody find support in favor of more than one such states, so that the holder of such properties may be faced with court orders or judgments in different states requiring the payment or delivery of such intangible personal property to two or more states, to his or its detriment or loss. A reading of the opinion of this court in *Western Union Telegraph Company v. Pennsylvania*, 368 U. S. 71, 82 S. Ct. 199, 7 L. Ed. 2d. 139, reveals a situation where the State of Pennsylvania and the State of New York, each with respectable court precedents, but on different theories, lay claim to the same

unclaimed or abandoned debt or obligation due by the Western Union Telegraph Company to another or others. The State of Florida, in its brief heretofore filed in this cause, has discussed the principle of "*mobilia sequuntur personam*" and its application to the unclaimed intangible personal properties involved in this litigation. It is not deemed necessary that additional authorities be added to those cited, referred to and quoted from in Florida's said brief on the points discussed and argued in said brief.

Although Florida is inclined to agree with the contention of the State of Texas that generally oil and gas royalties, rents, leases and the like are, under the laws of Texas, real property and not personal property, she parts company with Texas after the oil and gas involved have been severed from the land and when such royalties, rents, profits, and other obligations in connection with oil and gas leases and rights have accrued and become payable to the lessee or his assignee. After the oil or gas has been severed from the land, such oil and gas, as well as the royalties, rents and profits therefor become and are personal property and not realty. Although a court, if it can obtain personal jurisdiction over all parties involved, may adjudicate claims and demands between debtors and creditors and enter judgments thereon, without regard to the place of domicile or residence of the said persons, this right to adjudicate such claims and demands does not change the situs of the debt or demand as such. Jurisdiction over the two parties gives the court the right to adjudicate the said claim or demand. The question of

the situs of the intangible becomes material when proceeding against the claim or demand as a res, without personal jurisdiction of the creditor. In order to escheat the creditor's interest and right in a debt or obligation due him jurisdiction must be obtained over such creditor or of such debt or obligation. If the situs of such debt or obligation is at the domicile or residence of the said creditor, then it may not be reached by obtaining jurisdiction over the debtor alone. This leads to the conclusion that a state may not escheat and take both title and possession of a debt or obligation due a creditor in another state, without obtaining personal jurisdiction over such creditor also. This does not mean that the state of the domicile or residence of the debtor might not obtain custodial possession, as distinguished from an escheat, of the properties due the creditor and hold the same for his account or other person or state entitled thereto, so long as there is no transfer of title of the creditor's interest in the said obligation without personal jurisdiction over the said creditor.

Although a debtor corporation is domiciled in a particular state, or has a place of business within that state, or has entered into contracts or transacted business in that state, such state is without jurisdiction to escheat a debt or obligation due from such corporation to a creditor in another state, without first obtaining personal jurisdiction over such creditor. This same rule applies to accrued oil and gas royalty and rental payments, although the oil or gas leases under which such oil or gas royalty and rental

payments may have arisen are deemed interests in the lands leased, and not personal property. The controlling question as to whether oil and gas royalties and rentals are real estate or personal property in states wherein oil and gas leases are held to be interests in real property, seems to be whether such royalties and rentals have accrued or have not accrued.

ARGUMENT

Florida's main brief and argument in this case was filed with her application to intervene in the cause, and is hereby adopted as her general argument in support of the conclusions and recommendations of the Special Master herein. The conclusion and recommendations of the Special Master's Report and recommendation are clearly supported by the authorities cited, quoted from and referred to in Florida's said brief and main argument.

Brief of the State of Texas.

Florida will here argue and discuss the several points stated and argued in the brief of the State of Texas, filed in this cause in support of her exceptions to the Special Master's Report filed in this cause.

Intangible obligations have no fixed situs.—This point is argued on pages 24-28 of the said brief of the State of Texas wherein it is argued by the States of Texas that intangible obligations have no fixed situs. Florida submits

that, as will appear from the authorities cited, quoted from and referred to in her main brief and argument heretofore filed in the cause, that intangible obligations have their situs at the domicile of the creditor or person to whom payable. Such domicile, when once established, is presumed to continue until a change is shown. See pages 36 and 37 of the main brief of the State of Florida herein. If there has been a change of such a domicile, it is the duty of a state claiming that a creditor is no longer a resident or domiciled at the place mentioned in the record of obligations or intangible due or payable to him has changed or no longer exists at such location, to prove that there has been a change in such domicile or residence.

Royalties, rentals and mineral proceeds as real property.
 —The State of Texas, on pages 28-38 of her brief filed herein in support of its exceptions to the Special Master's Report herein, contends that the obligations of the Sun Oil Company, one of the defendants herein, to the several persons, firms and corporations, as oil and gas royalties, rentals and mineral proceeds derived from lands located within the State of Texas are real property interests and not personal property interests, and therefore have their situs in Texas and not elsewhere. The authorities that have been examined seem to support the said contention of the State of Texas as to *unaccrued* oil, gas and mineral proceeds under leases of oil and gas rights in lands in the State of Texas (see authorities cited by the State of Texas on pages 28-38 of her brief herein and 3A Summer's Oil and Gas, Permanent Edition, pages 50-64, section 583);

however, from the authorities it seems that *accrued* oil, gas and mineral proceeds, under leases of oil and gas rights in lands in the State of Texas, are personal property and not real property.

In 3A Summers Oil and Gas, Permanent Edition, 9 and 10, section 572, it is stated that "royalties may be accrued or unaccrued. Accrued royalty is merely a chose in action and personal property. It does not pass to the grantee of the land subject to the lease. Contracts which are interpreted as sales or transfers of accrued royalties are not within the statutes of frauds. Perhaps it may be safely asserted that oil royalty is usually real property, but that royalty oil is personal property. On the other hand, unaccrued royalties, if the lease may continue indefinitely, are incident to the revision of the land or minerals, and pass with a sale thereof, and when separately transferred are usually held to be interests in land."

In 2 American Law of Property, 455, section 9.41, the author states that "when rent has accrued and fallen due, it becomes a personal chose in action in the landlord, and as personal property it is a debt and so is subject to garnishment, and taxable as personalty . . . However, unaccrued rent that will be due in the future is not personalty but realty. It is not a personal chose in action, but an incorporeal interest in the land and as such is not a present debt, and thus not subject to garnishment."

In 3 American Law of Mining, 436 and 437, section 192, the author states, concerning oil and gas royalties, that

"the rent analogy has been frequently used in the realty-personalty classification. Rent, once it has accrued and is owing, is always considered a personal property interest, a chose in action. Unaccrued rent is not a chose in action but an interest in land; thus unaccrued royalty is characterized as a real property interest."

In United States v. Noble, 237 U. S. 74, text 80, 35 S. Ct. 532, 59 L. Ed. 844, text 848, this Court stated that "the rents and royalties (mineral) were profit issuing out of the land. When they accrued, they became personal property, but rents and royalties to accrue were a part of the estate remaining in the lessor. As such they would pass to his heirs, and not to his personal representative." (Parenthesis supplied).

In Kendall, Administrator v. Ewert, 259 U. S. 139, text 149, 42 S. Ct. 444, 66 L. ed. 867 and 868, this Court stated that "the record shows that a large sum in royalties for zinc and iron ore mined from the lands involved had been paid to Ewert, and these when accrued, were clearly personal property (*United States v. Noble*, 237 U. S. 74, 80, 59 L. Ed. 844, 847, 35 S. Ct. Rep. 532), which, on the death of Redeagle, would pass to his administrator for purposes of paying any inheritance and other taxes which might be properly chargeable against it, and for other administration charges, and for distribution."

In Cates v. Green, Tex. Civ. App., 114 S. W. 2d. 592, text 596, the court remarked that "deferred rentals (oil and

gas) which accrued . . . prior to the institution of this suit were clearly personal property."

In Cates v. Green, supra, text 595, and in *Lancaster v. Renwar Oil Corporation*, Tex. Civ. App., 270 S. W. 289 2d., text 292, it was stated by the Court that "it is true that, after the royalty interest in the oil has been severed from the land, it becomes personal property, but until such severance it constitutes an interest in the realty."

In Way v. Wilson, Tex. Civ. App., 43 S. W. 2d. 1110, it was held that where a landlord's creditor served a writ of garnishment on the landlord's tenant at a time when there was no rent payable, and the tenant filed his answer before the next installment becomes due, such installment cannot be impounded without suing out a further writ of garnishment. This case seems to hold that rent is not property of the landlord until it has accrued.

In Curlee v. Anderson and Paterson, Tex. Civ. App., 235 S. W. 622, text 624, the court remarked, concerning an oil and gas lease, that "the grantors' right to one-eighth of the oil produced and saved from the land could never arise until the oil was severed from the realty and had become personal property."

In Lone Star Gas Company v. Murchison, Tex. Civ. App., 353 S. W. 2d 870, text 879, the court remarked that "there can be no doubt that gas which has been produced

is personal property. Thus, in 31-A Tex. Jur. 27, it is said: 'When oil or gas is removed from the soil it becomes personalty.'

In Kentucky Bank & Trust Company v. Ashland Oil and Transportation Company, Ky. 310 S. W. 2d. 287, text 290, the Court of Appeals of Kentucky, citing 3A Summers Oil and Gas, section 572, states that when minerals have been extracted and reduced to separate possession "the oil and gas becomes personal property transferable as such, and *accrued* royalty is merely a chose in action and personal property."

In Cuff v. Koslosky, 165 Okla. 135, 25 P. 2d. 290, text 293, the Supreme Court of Oklahoma, citing Mills on Oil and Gas, page 97, said that "accrued royalties are ordinarily personal property but more strictly a chose in action, but unaccrued royalties are an incident of the revision, a part of the estate remaining in the lessor, as such estate descends to the heirs and not to the personal representatives."

In Ohio Oil Company v. Wright, 386 Ill. 206, 53 N. E. 2d. 966, text 969, the Supreme Court of Illinois said that "the right to receive royalties constitutes an interest in land, but accrued royalties are personal property."

In Callahan v. Martin, 3 Cal. 2d. 110, 43 P. 2d. 788, text 795, 101 A. L. R. 871, text 881, the Supreme Court of California, citing with approval *United States v. Noble*,

237 U. S. 74, 35 S. Ct. 532, 59 L. Ed. 844, held that accrued rents and royalties, concerning real property, are personal property and not real property.

In *Corbett v. La Bere*, N. D. 68 N. W. 2d. 211, text 214, in *Denver Joint Land Bank v. Dixon*, 57 Wyo. 523, 122 P. 2d. 842, text 848, 140 A. L. R. 1270; and in *Mark v. Bradford*, 315 Mich. 50, 23 N. W. 2d. 201, it was held that an interest or right in accrued oil and gas royalties is personal property but that a right in unaccrued oil and gas royalties is an interest in land and, therefore, real property.

In *Mark v. Bradford*, 315 Mich. 50, 23 N. W. 201, text 204, the court said that "rents and oil royalties were profits issuing from the land. When they accrued, they became personal property; but rents and royalties to accrue were a part of the real estate remaining in the lessor. As such they pass to his heirs and not to his personal representatives."

In *Arrington v. United Realty Company*, 188 Ark. 270, 65, S. W. 2d. 36, text 37, 90 A. L. R. 765, the Court said that "there seems to be some confusion in the decisions in failing to distinguish between accrued and unaccrued royalties, but it is clear from all the decisions that ordinarily accrued royalties, strictly speaking, are mere choses in action, and therefore personal property. But, according to Mills-Willingham on the Law of Oil and Gas, p. 179, unaccrued royalties are a part of the estate remaining in the lessor, and as such pass to the heirs, and is therefore an interest in land."

In Krone v. Lacy, 168 Neb. 792, 97 N. W. 528, text 533, the Supreme Court of Nebraska said that "royalties may be accrued or unaccrued. Accrued royalty is merely a chose in action and personal property. It does not pass to the grantee of the land subject to the lease and may be transferred and assigned the same as any other personal property. On the other hand unaccrued royalty is an interest in land and real property."

The Special Master, on page 10 of his report and recommendations herein, in item numbered (4), mentions "amounts payable as royalties on gas and oil production from lands in and rental on leases on lands in Texas, Louisiana, New Mexico and Mississippi . . ." which being for accrued royalties and rentals were and are intangible personal property and not interests in realty.

Multiple Escheat Claims to the same Intangible Obligations.—Florida contends that the situs of all intangible personal properties, such as are involved in this litigation has its situs for escheat and custodial proceedings by the several states of the union at the domicile or residence of the owner thereof or person entitled thereto. (See Florida Brief heretofore filed herein discussing the situs of intangible personal property). We are not here determining the validity or construction of a contract or agreement, but the situs of an accrued intangible. The use of any theory of situs for accrued intangible personal property other than that of following the owner or person entitled thereto leads into difficulties, especially when considering the

rights of escheat of such properties as abandoned or unclaimed by two or more states having some contact therewith.

The State of Texas mentions "Obligations for Royalty, Mineral Proceeds and Delay Rental from Texas Lands," (Texas Brief, pages 45, 46 and 47); "Royalty, Mineral Proceeds and Delay Rental from lands in" states other than Texas (Texas Brief, pages 50 and 51); "Unclaimed Wages, Payments for Services and Supplies, Amounts Payable for Employee Expenses" (Texas Brief pages 47 and 48); "Cash and Stock Scrip Dividends" (Texas Brief pages 48, 49 and 50); "Unclaimed Wage Deductions for Purchase of War Bonds" (Texas Brief page 52); and "Obligations of Unknown Origin" (Texas Brief pages 52 and 53). The items above-mentioned appear to be accrued obligations payable by the defendant "Sun Oil Company" as oil and gas royalties, rentals and other obligations, including wages, payments for services performed, supplies purchased, travel expenses, stock dividends, and other accrued obligations, which are intangible properties the situs of which, for escheat and custodial purposes, follows the domicile or residence of the person to whom due and payable. (See Florida's brief heretofore filed herein).

Brief of the State of New Jersey.

New Jersey, in her exceptions to the Master's Report herein and her brief in support thereof, contends that New Jersey, because the defendant Sun Oil Company is a corporation incorporated and existing under the laws of New Jersey, has a prior and superior claim and right to escheat the unclaimed properties held by the said Sun Oil Company, for the account of creditors residing in states and countries other than New Jersey. No New Jersey statute makes it a condition to incorporation in New Jersey that unclaimed and abandoned debts and obligations due from the corporations organized and incorporated under the laws of that state be paid over to the said state or be subject to escheat to the said state. Florida submits that the situs of unclaimed and abandoned obligations in the hands of debtors, held for the account of the creditors of such debtors, has its situs for purposes of escheat at the domicile or residence of the creditor and not at the domicile or residence of the debtor. (See Florida's brief heretofore filed herein).

On pages 16-23 of her said exceptions and brief, New Jersey contends that the states, including Florida, claiming the right to escheat or obtain protective custody of abandoned or unclaimed intangible personal property, as the state of residence or domicile of the creditor, has the burden of proving actual residence of the creditor within said state at the time escheat or custody is demanded and obtained. Florida contends, on pages 33-37 of her brief

heretofore filed herein, that once domicile or residence of a person is shown, for instance, upon the books and records of the defendant Sun Oil Company, that a presumption is raised that such place of residence is continued until the contrary is shown. For instance, if New Jersey wishes to contend that such a residence or domicile has changed to one other than as shown on the books and records of the Sun Oil Company, she has the burden of showing the alleged change of residence or domicile by competent evidence.

On pages 23—25 of her exceptions and brief, New Jersey contends that the rule of *mobilia sequunter personam* may not be applied to place the situs of unclaimed and abandoned property in the state of last known address. Florida contends that the authorities cited, quoted and referred to in her brief reject New Jersey's contention and support the said rule of *mobilia sequunter personam* as applied to the intangibles involved in this litigation.

On pages 25—28 of her exceptions and brief, New Jersey poses the question of the state entitled to escheat or take custody of intangibles where the name of the owner appears from the records of the defendant Sun Oil Company, but no address appears from said records, or where neither name nor address of the owner appears from said records. Doubtless applicable statutes of the states which are parties to this litigation are broad enough to reach such properties; however, the question of situs arises as between the states. There being no stated domicile or residence of the owner

or person entitled to such intangible, and nothing otherwise fixing such place of residence or domicile, we seem to be left to some presumption as to such place of residence or domicile. One presumption may well be that the transaction out of which the intangibles arose occurred in the state of incorporation of the corporation; another would be that it arose in the state wherein such corporation maintained its principal place of business; and still another would be at the location where the transaction out of which said intangibles arose occurred or was consummated. After the location of the transaction is ascertained it would seem to be reasonable that it be presumed that the creditor was domiciled at the place where the transaction arose. Under either of these theories it is doubted that Florida, in the present case, may lay claim to the intangibles where no address or ownership is shown from the records of the corporation, absent proof that the intangible at the present time has an actual situs in Florida.

Florida doubts that the convenience, economy and certainty mentioned by New Jersey on pages 28—31 of her *brief*, or that the obligations for corporate stock and dividends, mentioned by New Jersey on pages 32—33 of her *brief*, or the fact that the intangibles are not claims on checks, etc., as mentioned by New Jersey on pages 33, 34 and 35 of her *brief*, take the intangibles in question out of the rule that the situs of intangible personal properties follows the residence or domicile of their owner, mentioned and discussed by Florida in her *brief* heretofore filed herein.

On pages 35—40 of her brief New Jersey contends that complaint herein should be dismissed because the intangibles involved are "outside of Texas and the Texas Escheat law applies only to such property if held for a person 'whose last known residence' was in Texas"; Florida submits that Texas is a necessary party to the full determination of the issues herein and should be retained for that reason.

On pages 40—45 of her brief New Jersey contends that the Special Master herein erred in rejecting the several certified copies of escheat or custodial judgments of the New Jersey courts, as to the properties therein described, which purport to escheat or grant the custody of such properties to the State of New Jersey. It not appearing that the states of Texas, Florida and Pennsylvania were parties to this litigation, such New Jersey judgments are not binding on them.

CONCLUSION

For the foregoing reasons Florida respectively urges that the report and recommendations heretofore filed herein be approved and a decree in conformity with such report and recommendations be made and entered herein by this Honorable Court.

Respectfully submitted,

JAMES W. KYNES, Attorney General,
State of Florida

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General, State of Florida

JACK A. HARNETT, Assistant Attorney
General, State of Florida

CERTIFICATE OF SERVICE

I, James W. Kynes, Attorney General of Florida, one of the Attorneys for the State of Florida, and Intervenor herein, and member of the Bar of the Supreme Court of the United States, hereby certify that on March 12, 1964, I served copies of the foregoing Reply Brief of the State of Florida on each of the following parties and persons by depositing said copies in a United States Post Office or mail box, with first class or air mail postage prepaid and addressed as follows:

Honorable John B. Connally
Governor of Texas
State Capitol
Austin, Texas

Honorable William W. Scranton
Governor of Pennsylvania
State Capitol
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Honorable Richard J. Hughes
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I further certify that copies of the said Reply Brief of the State of Florida have also been served on the states named in paragraph VI of the plaintiff's Complaint by

depositing copies thereof in a United States Post Office or mail box, addressed to the Attorneys General of each of the said states, with first class or air mail postage prepaid.

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STATE OF TEXAS,

Plaintiff,

vs.

STATE OF NEW JERSEY, *et al.*,

Defendants.

REPLY BRIEF FOR THE STATE OF NEW JERSEY

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ARGUMENT

POINT I

Claims for royalties on gas and oil production from lands in and rental on leases on lands in Texas and for mineral proceeds are intangible personal property.

Texas argues that the claims for royalties on gas and oil production from lands in and rental on leases on lands in Texas and for mineral proceeds from lands in Texas are real property interests and would be classified as real property under the law of Texas. Therefore, Texas argues, these claims should be subject to escheat only under the laws of Texas.

We submit that under the facts as stipulated by the parties, which the Master adopted as his findings of fact, (Report of Special Master, p. 10), all the claims for royalties, rentals and mineral proceeds are accrued cash claims. As such, under established principles of law, these claims are personal property. *United States v. Noble*, 237 U. S. 74, 80 (1915); *Kendall v. Ewert*, 259 U. S. 139, 149 (1922).

In the case of royalties and rentals, Sun issued checks in an attempt to make payment of these cash claims. (Report of Special Master, p. 10). The only reason checks were not issued to attempt payment of the cash claims for mineral proceeds was that the persons entitled could not be determined. The report by Sun to the State of Texas gives the money value of each claim and indicates a claim for money rather than an interest in real property. The said cash claims should not be confused with "oil and gas in place" or "delayed rentals" which Texas refers to in its brief. No claims for oil or gas in place or delayed rentals are involved in this action.

The very law under which Texas claims the money here involved is a "personal property" escheat law and indicates that Texas has characterized this money as personal property. Texas sues here only under its Personal Property Escheat Law.

In *United States v. Noble, supra*, the Court said that accrued rents and royalties on mineral interests in land are personal property. There Charley Quapaw Blackhawk, a member of the Quapaw Tribe of Indians, had been allotted certain lands by the United States Government. The statute under which the allotment was made provided that said allotments shall be inalienable for a period of 25 years from and after the date thereof. This restriction was modified by a specified power to lease. Charley made several leases and assignments of royalties which the Government felt were procured by fraud and in violation of the restriction against alienation imposed by the Congress. In holding that it was beyond the power of Charley to alienate any interest in the land except as permitted by the law, the Court stated at page 80, nevertheless, with respect to his assignment of rents and royalties under a lease:

"We may first consider the assignments of rents and royalties. Under his patent, the allottee took an estate in fee, subject to the limitation that the land should be 'inalienable for the period of twenty-five years' from date. This restriction bound the land for the time stated, whether in the hands of the allottee or his heirs. *Bowling v. United States, supra*. It put it beyond the power of him, or of them, to alienate the land, or any interest therein, in any manner except as permitted by the acts of 1896 and 1897. See *Taylor v. Parker*, 235 U. S. 42. The comprehensiveness of the restriction was modified only by the power to lease; and while the allottee could make leases, as provided

in these acts, they gave him no power to dispose of his interest in the land subject to the lease, or of any part of it. *The rents and royalties were profit issuing out of the land. When they accrued, they became personal property*; but rents and royalties to accrue were a part of the estate remaining in the lessor." (Emphasis added.)

Kendall v. Ewert, supra, held that accrued royalties for zinc and lead ores mined from lands are personal property. This was an action commenced to set aside a sale of Indian lands which had been unlawfully purchased by an officer of the United States Government through an agent. It was also alleged that a fraud had been perpetrated on Redeagle who was a known drunkard.

Before the litigation was completed, Redeagle died and his administrator and three heirs continued the case.

While the appeal was pending, defendant obtained a quitclaim deed from the heirs of Redeagle for a sum substantially higher than that paid to Redeagle. Then defendant moved to dismiss on the grounds the claim was settled. He argued that the land and royalties passed to the heirs freed of any charges and there was no property or estate for an administrator to administer and no functions for him to perform. In rejecting this argument on the grounds that accrued royalties were personal property the Court stated at page 149 of 259 U. S.:

"... The record shows that large sums in royalties for zinc and lead ores mined from the lands involved had been paid to Ewert, and these when accrued were clearly personal property (*United States v. Noble*, 237 U. S. 74, 80), which, on the death of Redeagle, would pass to his administrator for purposes of paying any inheritance or other taxes which might be properly chargeable against it, and for other administration charges and for distribution." (Emphasis added.)

The property involved in this action consists of money claims against Sun and is unquestionably personal property.

POINT II

The rights of States to the unclaimed intangibles here involved cannot and should not be determined by principles of conflicts of law.

Texas contends that the taking of the unclaimed intangibles involved in this action should be resolved by "the points of contact theory of conflict of laws." Texas Brief, p. 38. We submit that if this theory is adopted as the standard defining the power of states to take ownerless intangibles from a corporation with multistate business operations, it will increase rather than eliminate the risk of multiple liability.

The question presented by the claims of the several states to the same unclaimed intangibles held by Sun cannot be resolved by principles of conflicts of law. The problem does not arise because of a conflict in the law of these states. These laws, rather than conflicting, have the same objective and lead to a similar result. They seek to take from Sun ownerless property held by Sun for the payment of unclaimed intangibles owed to persons who are unknown or whose present whereabouts are unknown. This situation does not present any question of conflicts of law. It presents a question of priority of jurisdiction for proceeding against Sun. It presents for determination the question of the certain and sure location of the intangibles so that when it is taken by one state no other state can assert a claim against the holder for the same intangible. It is the elimination of the threat of double or multiple liability to the holder which we believe is the primary concern

of this Court. *Western Union Telegraph Co. v. Pennsylvania*, 368 U. S. 71 (1961).

Texas argues that the question should be determined upon a theory of "points of contact," "grouping of contacts" or "center of gravity." The limited recognition of the theory of "points of contact," "grouping of contacts" or "center of gravity" has occurred in some contract and tort cases where courts have considered a "choice of law" question. This theory should not be applied in the case at hand. See: *Hausman v. Buckley*, 299 F. 2d 696 (2d Cir. 1962), cert. denied, 396 U. S. 885 (1962) which rejected the use of New York law on a points of contact theory and applied the law of the domicile of a corporation to determine rights pertaining to the internal affairs of the corporation.

In *Hausman* a stockholder commenced a derivative action on behalf of a Venezuelan corporation. The Court of Appeals held that under applicable New York conflicts of law rules the Venezuelan law, providing that a stockholder may not bring suit on behalf of his corporation, applied to bar the action. The Court rejected an argument by appellants that the New York rigid "choice-of-law" rules had given way to a flexible formula variously described in terms of "grouping of contacts" or the finding of a "center of gravity." On page 703 of 299 F. 2d the Circuit Court stated:

"Appellants also maintain that the cases in which the 'internal affairs' rule has been applied demonstrate only what the New York law was—and not what it is, or should be. They argue that in New York, 'rigid' choice-of-law rules such as this have given way to a 'flexible' formula variously described in terms of 'grouping of contacts' or the finding of a 'center of gravity,' as enunciated in *Auten v. Auten*, 308 N. Y. 155, 159-161, 124 N. E. 2d 99, 101-102, 50 A. L. R. 2d 246 (1954). This Court readily agrees that the *Auten*

case has substantially changed the manner in which New York courts decide which law 'governs' multistate contracts. Although it is less clear, it would appear that something in the nature of the *Auten* rule may also have been applied in tort cases. See *Kilberg v. Northeast Airlines, supra*. But we are unable to ascertain any authority which even remotely substantiates appellants' assertion that, 'The center of gravity doctrine is encroaching on and superseding traditional conflict of laws rules in all areas of litigation' (Appellants Brief, p. 32).

"Appellants have brought to our attention a number of cases in which this Court, in order to resolve 'commercial' controversies, referred to the *Auten* rule. But all of these cases involved questions concerning the law governing contracts or liability for torts. None of them directly or indirectly suggests that this Court was of the opinion that New York tribunals have introduced the *Auten* rule into corporate stockholder litigation. And appellants have not cited any decisions by New York courts in which this has been done. We do not wish to be understood as intimating in any way that the *Auten* rule could or could not be applied profitably to some corporate questions. Nor do we pass judgment upon the relative merits of the 'internal affairs' doctrine, vis-a-vis the *Auten* rule except to note our disagreement with appellants' suggestion that the 'internal affairs' doctrine has no application to the branch of the law with which we are dealing, or that it clearly serves no useful purpose at all. We think it is generally agreed that, in fact, 'the values of predictability and ease of application are best served by this rule.' *Reese and Kaufman, supra*, at p. 1144."

The adoption of any "points of contact," "grouping of contacts," or "center of gravity" theory in escheat cases would deprive the holders of any certainty whatsoever as to their liability. Insurmountable practical difficulties would be presented. Competent attorneys would have difficulty predicting the result of weighing contacts in a given case, and litigation would be encouraged, not discouraged, by such a rule. The expense to the holder would be greatly disproportionate to the benefits any state could obtain.

It has been recognized that the "grouping of contacts" theory has at least two disadvantages even in contract cases where all of the facts relative to the transaction are normally available. Unquestionably the disadvantages would be numerous in escheat cases where many years have passed since the claim became payable and facts relating thereto are meager and in many instances entirely unknown. The disadvantages in the contract cases are (1) litigants will be deprived of any certainty as to the outcome of a given case and (2) the theory might furnish a convenient means for justifying any desired result. By piling up real and fancied connections with one jurisdiction, however slight, a court could show an overwhelming connection with such jurisdiction. Note: "Choice of Law Problems in Direct Actions Against Indemnification Insurers," 3 *Utah L. Rev.* 490, 498 (1953).

A clear example of the inapplicability of the theory of "points of contact" in escheat cases is disclosed by the argument of Texas in support of its claim for the cash and stock dividends (Texas Brief, p. 48) and the obligations of unknown origin (Texas Brief, p. 52).

The only contact the State of Texas had with these claims is that the person entitled at one time had an address in Texas. The insignificance of this contact was indicated by Texas early in its brief where it objected to the Mas-

ter's recommended conclusions on last known address as a standard for escheat. Nevertheless, Texas now argues that when the last known address is in Texas it is the most significant contact under the theory of "contacts" they advance and supports a judgment escheating these claims to the State of Texas. How such a judgment is to protect the holder from multiple liability under this theory is not explained.

In their argument on cash and stock dividends, Texas attempts to minimize the significance of New Jersey's contacts by suggesting that large numbers of corporations are incorporated in New Jersey and leave only record and office addresses as required by the statute. Not only is this untrue as a general statement, but it is clearly not so in the case at bar. The stipulated facts establish that Sun is incorporated and exists under the laws of New Jersey and also conducts extensive business activities in New Jersey. Sun's authority to declare and pay dividends is regulated by the laws of New Jersey. Such contacts are of such forceful significance that even under a "contacts" theory all the property involved in this action could be held to be subject to escheat only in New Jersey. The lack of certainty resulting from the arguments for and against the right to escheat under a "contacts" theory could not possibly result in the protection from multiple liability which stakeholders are entitled to.

The problems which have developed in the application of laws providing for the escheat of ownerless intangibles held by corporations with multistate business operations sharply point up the importance of certainty, simplicity and convenience so that protection from multiple liability will unquestionably be provided.

To achieve this objective with a minimum of expense to the stakeholder as well as under a certain and sound rule.

leads to the adoption of the standard of state of corporate domicile. This conclusion is necessarily reached after the several standards of "last known address," "number of contacts" and "corporate domicile" have been critically analyzed. The only standard which can be fully acceptable to be applied in the taking of unclaimed intangibles from such corporations is the state of corporate domicile. The values of predictability and ease of application as well as full protection from multiple liability will best be served by the adoption of this standard.

Under the corporate domicile standard the holder will be protected from any further liability to another state under the Full Faith and Credit Clause of the United States Constitution. *Standard Oil Company v. New Jersey*, 341 U.S. 428 (1951).

CONCLUSION

For the foregoing reasons as well as those presented in our main brief, we again respectfully urge that this Court should enter judgment determining that the ownerless, intangible obligations held by Sun are subject to the superior right of New Jersey, as the state of incorporation of Sun, to take such property under its Custody and Escheat Laws and that neither Texas, Pennsylvania nor Florida has established a superior right to such intangibles.

Respectfully submitted,

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Proof of Service

I, Charles J. Kehoe, Deputy Attorney General of the State of New Jersey, one of the attorneys for defendant, State of New Jersey, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 13th day of March, 1964, I served copies of the Reply Brief of the State of New Jersey on each of the other parties to this action by depositing copies in a United States post office or mail box, with first class postage or air mail postage prepaid, and addressed to:

- (1) Honorable Waggoner Carr
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MAR 30 1964

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961

—
No. 13 ORIGINAL
—

STATE OF TEXAS, *Plaintiff,*

v.

STATE OF NEW JERSEY ET AL., *Defendants,*
and

STATE OF FLORIDA, *Intervenor*
—

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE
AND
BRIEF AMICUS CURIAE OF LIFE INSURANCE
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STATE OF TEXAS, *Plaintiff,*

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STATE OF FLORIDA, *Intervenor*

**MOTION OF LIFE INSURANCE ASSOCIATION OF
AMERICA FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE**

Petitioner, Life Insurance Association of America, respectfully moves this Court for leave to file the accompanying brief in this case as *amicus curiae*. The Attorneys General for the respective states of Pennsylvania, Florida, and Texas and the General Counsel for the defendant Sun Oil Company have consented, in writing, to the filing of this brief. The Attorney General for the State of New Jersey has refused to give such consent.

STATEMENT OF INTEREST

While not a party to this action, Petitioner is none the less no stranger to the case, it having presented its views in a brief *amicus curiae* filed before the Special Master with his leave. The points which Petitioner will discuss in the brief, which it now seeks to file as an aid to this Court, are the same as those made in the *amicus* brief which the Special Master had before him.

Petitioner is an organization composed of 126 life insurance companies having 84% of the legal reserve life insurance in force in the United States and has a substantial interest in the subject of this action.

The interest of Petitioner arises because

- (1) its member companies have paid over a period of 15 years, and will continue to pay, millions of dollars to a number of states, including Florida, New Jersey and Pennsylvania, under life insurance abandoned property laws providing for payment of unclaimed insurance proceeds to the state of last known address to the person entitled to the proceeds.
- (2) states which are parties to this action assert competing claims to the abandoned property in issue and base their respective rights to such property on tests other than the last known address test,
- (3) the Texas abandoned property law before the Court in this action contains an omnibus definition of "property" which includes amounts payable under insurance policies,
- (4) one of Petitioner's member companies has challenged the constitutionality of the abandoned property laws of six states in separate actions in three-judge federal district courts in three of

which such actions stays have been entered¹ preventing enforcement of the challenged laws, including the law of the State of New Jersey, and

- (5) twenty-three states [see Exhibit A attached] have enacted statutes providing expressly for the disposition of "unclaimed funds" of life insurance companies, in twenty-two of which, including Texas, New Jersey, Pennsylvania and Florida, the statutory test for escheat or taking custody of unclaimed life insurance proceeds specifically is the last known address, according to the records of the company, of the person entitled to be paid, and in the twenty-third of which (New York) the statute has been reviewed by this Court.²

Another reason for seeking leave to file the attached brief *amicus curiae* lies in certain statements made in the supporting brief filed on behalf of the State of New Jersey with this Court in connection with its exceptions to the report of the Special Master. It is the view of Petitioner that those statements have implications which could reach over into the field of abandoned property law with relation to life insurance proceeds. On page 16 of that brief these statements appear:

"In trying to locate the property subject to this action the Master considered that the property followed the creditor and that:

'The last known address of the creditor as appearing on the books of the debtor corporation is adequate and sufficient to establish the residence of the owner of the intangible property for escheat purposes.' P. 20

¹ In the other three cases, one law was declared unconstitutional and in the other two enforcement of the laws has been suspended by agreement until this action is concluded.

² *Connecticut Mutual Life Ins. Co. et al v. Moore*, 333 U.S. 541 (1948).

"It is both factually and legally incorrect to equate the last known address shown on the books of Sun with the domicile or residence of a creditor, both as to the present as well as at the time when the last known address was placed on Sun's books." (Emphasis supplied)

It is of significance in this connection that, as Petitioner has shown in this statement of interest, the statute of New Jersey relating to abandoned property in the field of life insurance proceeds is on a basis of *last known address of the person entitled thereto according to the books of the insurance company.*

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STATE OF TEXAS, *Plaintiff,*

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and

STATE OF FLORIDA, *Intervenor*

**BRIEF AMICUS CURIAE OF LIFE INSURANCE
ASSOCIATION OF AMERICA**

SUMMARY OF ARGUMENT

It is the position of Petitioner that

- (1) the requirements of *Western Union* can be satisfied only by the adoption of a single test or standard which would eliminate the possibility of multiple taking, and
- (2) the only such test or standard, and the only one which would give fair protection to the owner of the property, is the last known address test adopted herein by the Special Master.

ARGUMENT

The Last Known Address Test

This brief will present the case for the single, and simple, test of last known address of the one whose property, the claim against Sun Oil in one form or another, is sought to be appropriated for his benefit (custody) or for the benefit of all of the citizen subjects of the sovereign state (escheat). Only this test can satisfy the requirements of constitutional law, basic and procedural, which apply to this problem.

In *Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71, this Court recognized that rapidly multiplying state escheat laws as they have moved into the elusive and wide-ranging field of intangible transactions have presented problems of great importance to the States and to the persons who would be adversely affected by escheats, and pointedly said that no State could claim that the same debts or demands could be escheated by two states.¹

In *Western Union* this Court took the view that it was imperative that controversies among States in this field be settled in a forum which would render a final, authoritative determination and that this Court has jurisdiction for that purpose. This Court also took the view that a judgment which did not give assurance against the obligor being required to discharge twice the same single obligation was offensive to the due process clause of the United States Constitution.

¹ The opinion of the Court written by Mr. Justice Black said on page 75:

"Pennsylvania does not claim and could not claim that the same debts or demands could be escheated by two States."

In doing so this Court overruled *Connecticut Mutual* (which permitted New York to take although it was not the State of domicile) and *Standard Oil* (which permitted New Jersey to take as the State of incorporation) insofar as those cases held that a state was entitled to escheat even though other states, which might assert claims on one theory or another, were not before the Court.

The requirement of *Western Union* that the obligor be protected against the vicissitudes of the confusing complex of state laws can only be applied in terms of a single standard which furnishes that protection. We suggest that the owner should likewise be protected. This Court can furnish the required protection only if it recognizes one, and only one, basis for the sovereign act of the taking of abandoned intangible personal property by the States.

The effect of *Western Union*, then, is that the State which, as sovereign, seeks to take custody of or escheat intangible personal property must not only establish its sovereign right to do so, but must also meet the fair and logical requirement that the obligor be protected against exposure to the possibility of a claim or claims by another State or States. It follows from this, as heretofore suggested, that the taking must be based upon the application of a single standard which involves a constitutionally proper assertion by the State of a right to act, as sovereign, to take custody of or escheat, the property of the one whose property is taken. Surely (a) the State may not act in the interests of a citizen subject of any other sovereign State or take his property for the benefit of its citizens and (b) it may not act unless the possibility of the asser-

tion of a claim or claims by another State or States against the obligor is eliminated.

We respectfully submit that, basically, this Court is dealing here with a problem of sovereign right and not with the question of whether any sovereign State happens to be in a position to have the obligor within its grasp, for that alone should not give the State the right to take. Stated another way, this case presents the question of whether it appears that the claiming State as sovereign is entitled to take custody in the interests of the owner of the property, or to escheat for the benefit of all of the citizens of the State.

Earlier decisions than *Western Union* have overlooked this salient consideration. However, in *Western Union* this Court gave recognition to it. In that case, the Western Union Company challenged the judgment of the Pennsylvania courts, which was before this Court for review, on two main grounds:

- (1) that service by publication did not, for two reasons, give the State Court jurisdiction,
 - (a) lack of presence of the property or the "res" in Pennsylvania and,
 - (b) insufficiency of the notice by publication, and
- (2) "that there might be escheats claimed by other States which would not be bound by the Pennsylvania judgment because they were not and could not be made parties to this Pennsylvania proceeding."

On page 74 of 368 U.S. the opinion of this Court said:

"We find it unnecessary to decide any of Western Union's contentions as to the adequacy of notice to and validity of service on the individual claim-

ants by publication. For as we view these proceedings, there is a far more important question raised by this record—*whether Pennsylvania had power at all to render a judgment of escheat which would bar New York or any other State from escheating this same property.*” (Emphasis supplied)

It is the position of Petitioner that the issue before this Court can only be settled by the adoption by this Court of a single standard, which will define the reach of sovereign power in this area. Only if the last known address test be applied can it be unequivocally said that all requirements of due process have been satisfied.

The last known address of the owner, establishing presumptive domicile, furnishes a constitutional, reasonable and equitable basis for the determination by this Court of the issue of which state is entitled to take the property of the owner. It is not necessary to resort to fiction when there exists a record of an owner's last known address. Such last known address is a fact. It furnishes a single standard which eliminates the possibility that the obligor will have to discharge the same single obligation twice and so meets the requirements laid down by this Court in *Western Union*. Equally important, it provides a standard which protects the constitutional right of the owner of the property sought to be taken against the very real possibility that some State in which he may never have resided might take his property and so assures his right of fair treatment.

There is no other test which, under our federal system of numerous state sovereignties, can meet the challenge of the constitutional requirements, with re-

spect to abandoned intangible personal property, as they have been laid down by this Court.

The Domiciliary Test

The domiciliary test, if applied, would give to the state of domicile of the obligor of a chose in action the power to escheat or take custody of an amount equivalent to the value of the chose. This test fails to meet constitutional requirements because (a) it is the right of the owner of a chose in action which is the property and not the liability of the obligor, (b) it gives the property to a state in which, in most cases, the owner never resided, and (c) in practical terms it affords the owner no protection.

The only property right in a chose in action is the right of the owner to be paid in accordance with the terms of the undertaking. It is only he, or one acting through him, who can exercise such a right. If such a right is abandoned, it is abandoned by him;² the place of abandonment would be where he was then residing. It is, therefore, the state where the owner resides which alone has sovereign power to act with respect to the property or property rights of its subject citizen.

As to consideration (c) above, fairness to the owner of the property is one of the governing factors. The constitutional rights of the owner, and the requirements of fairness, necessitate that he be given the fullest protection at all times and in all circumstances against the taking of his property. Requirements of

² *Connecticut Mutual Ins. Co. v. Moore*, 333 U.S. 541. On page 551, in the majority opinion, the court said: "It is the beneficiary of the policy, not the insurer, who has abandoned the moneys."

notice, of the ability of the owner to claim his property from a state on the other side of the continent and other such factors, demand the rejection of the domiciliary test on this ground. The domiciliary test in this light must fail because, unlike the last known address test in the situations in which it would be applied, it does not in all instances afford a maximum standard of fairness and of protection of the constitutional rights of the owner.

That the last known address test, based upon the most natural starting point of any effort to locate the owner, remedies this particular deficiency of the domiciliary test is practically and forcefully illustrated by the experience of many of Petitioner's member companies. In connection with claims as to which companies have, after considerable effort, been unable to locate the claimants the advertising which has taken place under various last known address state laws has unearthed a great many of them. In the case of one company alone it has been able to pay the claims to the persons entitled to be paid in a total amount over the years of several hundred thousand dollars, rather than having been compelled to turn the money over to the states.

It is interesting to note the statement on page 9 of the brief before this Court, on behalf of the State of New Jersey, concerning the statute of New Jersey under which it claims here that:

"Notice of the taking for custody is mailed to the *last known address of the owner* and the Attorney General of another state, if *the address* is in another state." (Emphasis supplied.)

Another weakness of the domiciliary test is dramatically illustrated here by the fact that defendant, Sun Oil Company, while incorporated in the State of New Jersey has its *de facto* principal office in the State of Pennsylvania.

The Last Known Address Test Has Become The Test Adopted By The States With Respect To Life Insurance Proceeds In The Field of Abandoned Property

It is also the position of Petitioner that, in the life insurance field, the constitutional test of last known address as the basis for taking the proceeds of life insurance policies has been recognized by this Court¹ and specifically adopted by The National Conference of Commissioners on Uniform State Laws for the purpose of the Uniform Disposition of Unclaimed Property Act, and specifically adopted by twenty-two of the twenty-three States having abandoned property laws relating to life insurance.

In twenty-two States today, as previously stated, with relation to proceeds of life insurance policies the specific test of last known address of the person to whom the money is owed is the test which is applied to determine the cases in which report and payment, for purposes of custody or escheat, is to be made to the state. In one, the State of New York, the provisions of the statute relate to the proceeds of "policies issued on the lives of residents of this state."²

¹ *Connecticut Mutual Life Insurance Co., et al v. Moore*, 333 U.S. 541.

² Section 700 New York Abandoned Property Law.

The Connecticut Mutual Case

In 1948 a challenge to the application of the New York law to life companies foreign to New York reached this Court.² In that case the sole ground upon which New York asked this Court to uphold its law was, as stated in the conclusion to the brief of the New York Attorney General, that:

"A reversal (of the decision of the New York Court of Appeals in favor of New York) would lead to the *wholly unjustifiable result* that the proceeds of unclaimed or abandoned policies which 'were written and/or delivered in New York by New York agencies of the [foreign] companies and insured the lives of New York residents' (R. 51) would be paid over to other states *simply because the companies were originally there incorporated*, rather than to New York." (First parenthetical words and emphasis ours)

A majority of six of the Justices voted to hold in favor of New York, as a non-domiciliary state of plaintiffs, pointedly restricting the reach of the decision, by saying (page 549):

"We do not pass upon the validity in instances where insured persons, after delivery, cease to be residents of New York or where the beneficiary is not a resident of New York at maturity of the policy. As interests of other possible parties not represented here may be affected by our conclusions and as no specific instances of those types appear in the record, we reserve any conclusion as to New York's power in such situations."

and further saying (page 550):

"Consequently a case or controversy arising from a statute interpreted by the state court is here with precise federal constitutional questions as to

policies issued for delivery in New York upon the lives of persons then resident therein *where the insured continues to be a resident and the beneficiary is a resident at maturity of the policy* . . . We pass only upon New York's power to take over the care of abandoned moneys under those circumstances." (emphasis added)

Of great significance also, in terms of the application of abandoned property laws to life insurance proceeds, is the statement, appearing on page 551, toward the conclusion of the majority opinion that:

"It is the beneficiary of the policy, not the insurer, who has abandoned the moneys."

Thus this Court recognized the sovereign right of New York to take custody of money owed to those who were last known to be residents of New York and that it was not denied that right by the fact that the life insurance companies involved here were not domiciled in New York. Because of the peculiar wording of the New York statute, this Court confined the reach of the New York law also to cases in which the policies had been issued to persons who were residents of New York at the time of issue.

The Uniform Act

Following *Connecticut Mutual*, in 1954 the National Conference of Commissioners on Uniform State Laws adopted the Uniform Disposition of Unclaimed Property Act. In an introduction to the Act, the authors referred to *Connecticut Mutual* saying:

"Two recent decisions of the United States Supreme Court, *Connecticut Mutual Insurance Co. v. Moore*, 333 U.S. 541, 92 L. Ed. 863 (1947) and *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 95

L. Ed. 1078 (1951), . . . reveal that a troublesome problem of multiple liability for the holder of unclaimed property arises in case two or more states, each having jurisdiction over such property, enact statutes dealing with the subject. If two such statutes cover the same items of property, and if each state seeks to exercise its jurisdiction, it becomes likely that the holder may be subjected to double, or, perhaps, even more extensive liability for funds in its custody. Or, even though the statutes are so framed as to avoid multiple liability, a 'race of diligence' between states having jurisdiction may ensue, with each state trying to reach the funds first.

"In the 1947 (sic) decision in *Connecticut Mutual Insurance Co. v. Moore*, the United States Supreme Court held that the State of New York may take possession of unclaimed funds due on insurance policies issued to persons in the state of New York, even though the insurance company holder of the funds is domiciled in another state. Jurisdiction is based upon the relationship of the policyholders to the state."

In the portion of the Act dealing with unclaimed proceeds of life insurance policies, the test of last known address of the claimant, according to the records of the insurance company, was adopted. A copy of the section of the Uniform Act directly bearing on this aspect of the Act is attached as Exhibit "B". The authors, in a formal comment, explained the rationale of the choice of this test in the life insurance field in this way:

"In general, insurance companies qualify and are authorized to write insurance in many or most of the states of the Union. Therefore, jurisdiction over such companies as holders of unclaimed property is normally wide-spread throughout the

country, thus permitting and suggesting differentiation from ordinary business or industrial corporations and also from banking organizations. Indeed *reliance upon the state of incorporation or principal place of business* of the insurance company to take custody of unclaimed property *would be most undesirable*, both for the reason that it would concentrate the administrative burdens in the few states that incorporate most of the insurance companies, and also *because such reliance would result in the same few states obtaining the use of the bulk of the unclaimed funds regardless of the state of address of the persons entitled thereto*. The alternative used in Section 3 (Exhibit "B") is preferable, and accordingly, jurisdiction is conferred upon the state of the last recorded address of the person entitled. This practice has been adopted in the states which have most recently enacted legislation of this nature, notably Connecticut, Massachusetts, North Carolina and Pennsylvania." (Parenthetical words and emphasis ours)

In this way the authors, following *Connecticut Mutual* and the pattern of state action and public policy already developing, sought to give life insurance companies the "assurance" to which this Court later referred,⁴ against the peril of *double* payment of a single obligation.

The Subsequent Action of The States

As we have seen, in the years that have intervend since *Connecticut Mutual* and the Uniform Act there has been a uniform adoption by the States of the principle of *Connecticut Mutual* and of the Uniform Act and of a *single public policy* with relation to the proceeds of life insurance as abandoned property.

⁴ *Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71; 80 (1961).

The Texas Statute Here Involved

In the case of the statute of Texas here involved, the proceeds of insurance policies are grouped with all other intangibles in an omnibus definition of "personal property".

CONCLUSION

While cases, involving the question of a proper standard for determining the right to recover abandoned property have been before this Court in the past, this case is really one of first impression. For the first time this Court is being called upon to decide the issue among competing States.

Petitioner respectfully submits that

- (1) the requirements of *Western Union* can be satisfied only by the adoption of a single test or standard which would eliminate the possibility of multiple taking, and
- (2) the only such test or standard, and the only one which would give fair protection to the owner of the property, is the last known address test adopted herein by the Spécial Master.

Respectfully submitted,

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Of Counsel: Attorney for Petitioner

WARREN ELLIOTT
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EXHIBIT A

<i>State</i>	<i>Statutory Reference</i>
Arizona	Ariz. Rev. Stat., §§ 44-351 to 44-378
California	Calif. Code of Civil Proc. §§ 1500 to 1527
Connecticut	Conn. Gen. Stat. §§ 3-56a to 3-75a
Delaware	Del Code, Tit 12 §§ 1180 to 1194
Florida	Fla. Stat. Ann. §§ 717-01 to 717-30
Idaho	Idaho Code, §§ 14-501 to 14-530
Illinois	Ill. Stat. Ann., Ch. 141, §§ 101 to 130
Kentucky	Ky. Rev. Stat., §§ 393.010 to 393.160
Massachusetts	Mass. Ann. Laws, Ch. 175, §§ 149A to 149D
Michigan	Mich. Stat. Ann., §§ 126.1053(5) to 26.1053(65)
Montana	Ch. 244, L. 1963
Nevada	Nev. Revised Stat., §§ 690.180 to 690.300
New Jersey	N.J. Stat. Ann., §§ 17:34-49 to 17:34-58
New Mexico	New Mex. Stat. Ann., §§ 22-22-1 to 22-22-29
New York	N.Y. Abandoned Property Law, §§ 700 to 706
North Carolina	N.C. Gen. Stat., §§ 116-23.1
Oregon	Oreg. Stat. §§ 98.302 to 98.436
Pennsylvania	Pa. Stat., Tit. 27, §§ 461 to 473
Tennessee	Tenn. Code Ann. §§ 56-238-56-249
Texas	Ch. 333, L. 1963
Utah	Utah Code §§ 78-44-1 to 78-44-28
Virginia	Va. Code, Tit. 55, §§ 55-210 to 55-210.29
Washington	Wash. Rev. Code §§ 63.28.070 to 63.28.920

EXHIBIT B**SECTION 3. [Unclaimed Funds Held by Life Insurance Corporations.]**

(a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceeding seven years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

Certificate of Service

I, Warren Elliott, one of the Attorneys for the Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on March 19, 1964, pursuant to Rule 33(1) and 33(3)(b), I served copies of the foregoing Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae on each of the following parties and persons by depositing said copies in a United States Post Office or mail box, with first class or air mail postage prepaid and addressed as follows:

Honorable Arthur J. Sills
Attorney General of New Jersey
State House Annex
Trenton 25, New Jersey

Honorable James W. Kynes
Attorney General of Florida
Capitol Building
Tallahassee, Florida

Honorable Waggoner Carr
Attorney General of Texas
Supreme Court Building
Austin, Texas

Honorable Walter E. Alessandroni
Attorney General of Pennsylvania
State Capitol
Harrisburg, Pennsylvania

Honorable Henry A. Frye
Pepper, Hamilton & Sheetz
2001 Fidelity-Philadelphia Trust Building
Philadelphia, Pennsylvania

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Attorney for Petitioner
1701 K Street, N.W.
Washington 6, D. C.

LE COPY

Office-Supreme Court, U.S.
FILED

MAR 26 1964

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961

No. 13 Original

STATE OF TEXAS,

Plaintiff,

vs.

STATE OF NEW JERSEY, *et al.*,

Defendants,

and

STATE OF FLORIDA,

Intervenor.

**OBJECTION OF THE STATE OF NEW JERSEY TO
MOTION OF LIFE INSURANCE ASSOCIATION OF
AMERICA FOR LEAVE TO FILE BRIEF
AMICUS CURIAE**

ARTHUR J. SILLS,
Attorney General of New Jersey,
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State House Annex,
Trenton 25, New Jersey.

THEODORE I. BOTTER,
First Assistant Attorney General,

CHARLES J. KEHOE,
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*Counsel for Defendant,
State of New Jersey.*

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961

No. 13 Original

STATE OF TEXAS,

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v.

STATE OF NEW JERSEY, *et al.*,

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**OBJECTION OF THE STATE OF NEW JERSEY TO
MOTION OF LIFE INSURANCE ASSOCIATION OF
AMERICA FOR LEAVE TO FILE BRIEF
AMICUS CURIAE**

The State of New Jersey objects to the motion of the Life Insurance Association of America for leave to file a brief *amicus curiae*, which was served on March 19, 1964, on the following grounds:

a. This case does not involve any unclaimed life insurance funds.

b. The nature of unclaimed life insurance funds can be properly distinguished from unclaimed funds held by general corporations.

c. There is no conflict between the laws of Texas Ch. 333, L. 1963 and the laws of New Jersey, L. 1946, c. 154 (N.J.S.A. 17:34-49 *et seq.*) which provides for the disposition of unclaimed life insurance funds.

d. All facts and questions relative to the unclaimed personal property involved in this action have been adequately presented to the Court by the parties.

e. Petitioner did not participate in the proceedings before the Special Master as *amicus curiae* in the sense in which this term is generally understood.

In the Statement of Interest petitioner says:

"While not a party to this action, Petitioner is none the less no stranger to the case, it having presented its views in a brief *amicus curiae* filed before the Special Master with his leave. The points which Petitioner will discuss in the brief, which it now seeks to file as an aid to this Court, are the same as those made in the *amicus* brief which the Special Master had before him."

So that this Court will understand New Jersey is not seeking to eliminate from the proceedings an *amicus curiae* which participated as such before the Special Master, we respectfully present the following excerpts from an exchange of correspondence between the Special Master and the State of New Jersey.

From letter of the Special Master, dated September 26, 1963:

"P. S. Mr. Ralph Oman, an attorney of Topeka, Kansas, who has an interest in this litigation through representing life insurance companies and through his contacts with the Life Insurance Association of America, has on a number of occasions asked me whether the Association might file a brief in this case. I, of course, told him that they could not appear as a party nor I did not particularly relish filing a brief amicus curiae, but if they wanted to file with me a brief for whatever benefit it was to me, I would be glad to receive it since I was looking for all the help I could get. Mr. Oman is now in my office apologizing that they had been dilatory and now asks to obtain permission to file such a brief. I have reiterated my statement that the Court wants help from whatever source it can get and told him that if his organization wanted to file a brief, limited to the questions in this case, I would be glad to receive it and give it consideration the same as I would a citation from a lawyer on the street which bore on this question."

From letter of attorney for the State of New Jersey, dated October 2, 1963:

"We respectfully object to any life insurance companies being permitted to file a brief in this cause. Funds of the nature held by life insurance companies are not involved in this case. The United States Supreme Court by its order, dated February 25, 1963, denied the motion of the Insurance Company of North America for leave to intervene in this cause. This is, we believe a controlling expression that the questions to be litigated in this case are not to become further involved by unrelated questions relative to unclaimed funds held by life insurance companies."

From letter of the Special Master, dated October 4, 1963:

"Now, with respect to the brief of the life insurance companies. Permission has been given them to file such a brief and the brief is now being prepared. Mr. Ralph Oman, whom you may have met when you were here, a Topeka attorney, is now in New York assisting in the preparation of this brief. I had a telephone call from him in regard to this matter and that is the reason I know he is now there. I assume that I would have a perfect right to employ a law clerk to assist me in this matter and file his brief with me, and any brief filed by the insurance companies will be filed in that capacity. I strictly advised Mr. Oman the companies' brief should be limited to the question in issue before us.

"You know, Mr. Kehoe, I am desirous of gaining all the light and information I can from whatever source possible. That has always been my policy as a judge of the Court. If someone told me of a freight engineer down in the Santa Fe yards who had a case that he thought bore on these questions, I would go down and climb into the cab with him and get the information. The attorneys for the insurance companies will, of course, not be permitted to make oral argument at our hearing because they are not parties to this case, and as I have indicated in my previous letter, if the parties want time to reply to this brief, they will be given such time. I rather doubt whether the insurance companies can throw any new light on this question—that is things that either the attorneys in this case or I have not thought of."

We submit that the foregoing exchange between the Special Master and the State of New Jersey indicates that the

brief submitted to the Special Master by the Life Insurance Association of America was not presented *amicus curiae* as that term is generally intended. The petitioner seeks in this action to have the Court pass upon questions relative to unclaimed insurance funds. Such unclaimed funds are not involved in the action and the judgment entered by this Court will not be binding upon the life insurance companies.

CONCLUSION

For the foregoing reasons we respectfully submit that the motion of Life Insurance Association of America for leave to file a brief *amicus curiae* should be denied.

Respectfully submitted,

ARTHUR J. SILLS,
Attorney General of New Jersey,
Attorney for Defendant,
The State of New Jersey.

THEODORE I. BOTTER,
First Assistant Attorney General.

CHARLES J. KEHOE,
Deputy Attorney General.
Counsel for Defendant,
State of New Jersey.

SUPREME COURT OF THE UNITED STATES

No. 13, ORIGINAL.

State of Texas, Plaintiff,
v.
State of New Jersey et al. } Complaint.

[February 1, 1965.]

MR. JUSTICE BLACK delivered the opinion of the Court:

Invoking this Court's original jurisdiction under Art. III, § 2, of the Constitution,¹ Texas brought this action against New Jersey, Pennsylvania, and the Sun Oil Company for an injunction and declaration of rights to settle a controversy as to which State has jurisdiction to take title to certain abandoned intangible personal property through escheat, a procedure with ancient origins² whereby a sovereign may acquire title to abandoned property if after a number of years no rightful owner appears. The property in question here consists of various small debts totaling \$26,461.65³ which the Sun Oil Company for periods of approximately seven to 40 years prior to the bringing of this action has owed to approximately 1,730 small creditors who have never appeared to collect them. The amounts owed, most of them resulting from failure

¹ "The judicial Power shall extend . . . to Controversies between two or more States"

"In all cases . . . in which a State shall be Party; the supreme Court shall have original Jurisdiction."

² 28 U. S. C. § 1251 (a) (1958 ed.) provides in relevant part:

"The Supreme Court shall have original and exclusive jurisdiction of:

"(1) All controversies between two or more States"

³ See generally Enever, *Bona Vacantia Under the Law of England*: Note, 61 Col. L. Rev. 1319.

⁴ The amount originally reported by Sun to the Treasurer of Texas was \$37,853.37, but payments to owners subsequently found reduced the unclaimed amount.

of creditors to claim or cash checks, are either evidenced on the books of Sun's two Texas offices or are owing to persons whose last known address was in Texas, or both.⁴ Texas says that this intangible property should be treated as situated in Texas, so as to permit that State to escheat it. New Jersey claimed the right to escheat the same property because Sun is incorporated in New Jersey. Pennsylvania claimed power to escheat part or all of the same property on the ground that Sun's principal business offices were in that State. Sun has disclaimed any interest in the property for itself, and asks only to be protected from the possibility of double liability. Since we held in *Western Union Tel. Co. v. Pennsylvania*, 368 U. S. 71, that the Due Process Clause of the Fourteenth Amendment prevents more than one State from escheating a given item of property, we granted Texas leave to

⁴ The debts consisted of the following:

(1) Amounts which Sun attempted to pay through its Texas offices owing to creditors some of whose last known addresses were in Texas, some of whose last known addresses were elsewhere, and some of whom had no last known address indicated:

(a) uncashed checks payable to employees for wages and reimbursable expenses;

(b) uncashed checks payable to suppliers for goods and services;

(c) uncashed checks payable to lessors of oil- and gas-producing land as royalty payments;

(d) unclaimed "mineral proceeds," fractional mineral interests shown as debts on the books of the Texas offices.

(2) Amounts for which various offices of Sun throughout the country attempted to make payment to creditors all of whom had last known addresses in Texas:

(a) uncashed checks payable to shareholders for dividends on common stock;

(b) unclaimed refunds of payroll deductions owing to former employees;

(c) uncashed checks payable to various small creditors for minor obligations;

(d) undelivered fractional stock certificates resulting from stock dividends.

file this complaint against New Jersey, Pennsylvania and Sun, 371 U. S. 873, and referred the case to the Honorable Walter A. Huxman to sit as Special Master to take evidence and make appropriate reports, 372 U. S. 926.⁵ Florida was permitted to intervene since it claimed the right to escheat the portion of Sun's escheatable obligations owing to persons whose last known address was in Florida. 373 U. S. 948.⁶ The Master has filed his report. Texas and New Jersey each have filed exceptions to it, and the case is now ready for our decision. We agree with the Master's recommendation as to the proper disposition of it.

With respect to tangible property, real or personal, it has always been the unquestioned rule in all jurisdictions that only the State in which the property is located may escheat. But intangible property, such as a debt which a person is entitled to collect, is not physical matter which can be located on a map. The creditor may live in one State, the debtor in another, and matters may be further complicated if, as in the case before us, the debtor is a corporation which has connections with many States and the creditor is a person who may have had connections with several others and whose present address is unknown. Since the States separately are without constitutional power to provide a rule to settle this interstate controversy and since there is no applicable federal statute, it becomes our responsibility in the exercise of our original jurisdiction to adopt a rule which will settle the

⁵ Texas' motion for leave to file the bill of complaint also prayed for temporary injunctions restraining the other States and Sun from taking steps to escheat the property. The other States voluntarily agreed not to act pending determination of this case, and so the motion for injunctions was denied. 370 U. S. 929.

⁶ Illinois, which claims no interest in the property involved in this case, also sought to intervene to urge that jurisdiction to escheat should depend on the laws of the State in which the indebtedness was created. Leave to intervene was denied. 372 U. S. 973.

question of which State will be allowed to escheat this intangible property.

Four different possible rules are urged upon us by the respective States which are parties to this case. Texas, relying on numerous recent decisions of state courts dealing with choice of law in private litigation,⁷ says that the State with the most significant "contacts" with the debt should be allowed exclusive jurisdiction to escheat it, and that by that test Texas has the best claim to escheat every item of property involved here. Cf. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306; *Atkinson v. Superior Court*, 49 Cal. 2d 338, 316 P. 2d 960, appeals dismissed and cert. denied *sub nom. Columbia Broadcasting System, Inc. v. Atkinson*, 357 U. S. 569. But the rule that Texas proposes, we believe, would serve only to leave in permanent turmoil a question which should be settled once and for all by a clear rule which will govern all types of intangible obligations like these and to which all States may refer with confidence. The issue before us is not whether a defendant has had sufficient contact with a State to make him or his property rights subject to the jurisdiction of its courts, a jurisdiction which need not be exclusive. Compare *McGee v. International Life Ins. Co.*, 355 U. S. 220; *Mullane v. Central Hanover Bank & Trust Co.*, *supra*; *International Shoe Co. v. Washington*, 326 U. S. 310.⁸ Since this Court has held

⁷ E. g., *Schmidt v. Driscoll Hotel, Inc.*, 249 Minn. 376, 82 N. W. 2d 365; *Auten v. Auten*, 308 N. Y. 155, 124 N. E. 2d 99; *Haumschild v. Continental Casualty Co.*, 7 Wis. 2d 130, 95 N. W. 2d 814. See also *Clay v. Sun Insurance Office, Ltd.*, 377 U. S. 179; *Watson v. Employers Liability Assurance Corp.*, 348 U. S. 66; cf. *Richards v. United States*, 369 U. S. 1; *Vanston Bondholders Protective Committee v. Green*, 329 U. S. 156.

⁸ Nor, since we are dealing only with escheat, are we concerned with the power of a state legislature to regulate activities affecting the state, power which like court jurisdiction need not be exclusive. Compare *Osborn v. Ozlin*, 310 U. S. 53.

in *Western Union Tel. Co. v. Pennsylvania*, *supra*, that the same property cannot constitutionally be escheated by more than one State, we are faced here with the very different problem of deciding which State's claim to escheat is superior to all others. The "contacts" test as applied in this field is not really any workable test at all—it is simply a phrase suggesting that this Court should examine the circumstances surrounding each particular item of escheatable property on its own peculiar facts and then try to make a difficult, often quite subjective, decision as to which State's claim to those pennies or dollars seems stronger than another's. Under such a doctrine any State likely would easily convince itself, and hope to convince this Court, that its claim should be given priority—as is shown by Texas' argument that it has a superior claim to every single category of assets involved in this case. Some of them Texas says it should be allowed to escheat *because* the last known addresses of the creditors were in Texas, others it claims *in spite of* the fact that the last known addresses were *not* in Texas. The uncertainty of any test which would require us in effect either to decide each escheat case on the basis of its particular facts or to devise new rules of law to apply to ever-developing new categories of facts, might in the end create so much uncertainty and threaten so much expensive litigation that the States might find that they would lose more in litigation expenses than they might gain in escheats.²

New Jersey asks us to hold that the State with power to escheat is the domicile of the debtor—in this case New

² Texas argues in particular that at least the part of the intangible obligations here which are royalties, rents, and mineral proceeds derived from land located in Texas should be escheatable only by that State. We do not believe that the fact that an intangible is income of real property with a fixed situs is significant enough to justify treating it as an exception to a general rule concerning escheat of intangibles.

Jersey, the State of Sun's incorporation. This plan has the obvious virtues of clarity and ease of application. But it is not the only one which does, and it seems to us that in deciding a question which should be determined primarily on principles of fairness, it would too greatly exalt a minor factor to permit escheat of obligations incurred all over the country by the State in which the debtor happened to incorporate itself.

In some respects the claim of Pennsylvania, where Sun's principal offices are located, is more persuasive, since this State is probably foremost in giving the benefits of its economy and laws to the company whose business activities made the intangible property come into existence. On the other hand, these debts owed by the Sun are not property to it, but rather a liability, and it would be strange to convert a liability into an asset when the State decides to escheat. Cf. *Case of the State Tax on Foreign-held Bonds*, 15 Wall. 300, 320. Moreover, application of the rule Pennsylvania suggests would raise in every case the sometimes difficult question of where a company's "main office" or "principal place of business" or whatever it might be designated is located. Similar uncertainties would result if we were to attempt in each case to determine the State in which the debt was created and allow it to escheat. Any rule leaving so much for decision on a case-by-case basis should not be adopted unless none is available which is more certain and yet still fair. We think the rule proposed by the Master, based on the one suggested by Florida, is.

The rule Florida suggests is that since a debt is property of the creditor, not of the debtor,¹⁰ fairness among the States requires that the right and power to escheat

¹⁰ On this point Florida stresses what is essentially a variation of the old concept of "mobilia sequuntur personam," according to which intangible personal property is found at the domicile of its owner. See *Blodgett v. Silberman*, 277 U. S. 1, 9-10.

the debt should be accorded to the State of the creditor's last known address as shown by the debtor's books and records.¹¹ Such a solution would be in line with one group of cases dealing with intangible property for other purposes in other areas of the law.¹² Adoption of such a rule involves a factual issue simple and easy to resolve, and leaves no legal issue to be decided. It takes account of the fact that if the creditor instead of perhaps leaving behind an uncashed check had negotiated the check and left behind the cash, this State would have been the sole possible escheat claimant; in other words, the rule recognizes that the debt was an asset of the creditor. The rule recommended by the Master will tend to distribute escheats among the States in the proportion of the commercial activities of their residents. And by using a standard of last known address, rather than technical legal concepts of residence and domicile, administration and application of escheat laws should be simplified. It may well be that some addresses left by vanished creditors will be in States other than those in which they lived at the time the obligation arose or at the time of the escheat. But such situations probably will be the exception, and any errors thus created, if indeed they could be called errors, probably will tend to a large extent to cancel each other out. We therefore hold that each item of property

¹¹ We agree with the Master that since our inquiry here is not concerned with the technical domicile of the creditor, and since ease of administration is important where many small sums of money are involved, the address on the records of the debtor, which in most cases will be the only one available, should be the only relevant last-known address.

¹² See, e. g., *Baldwin v. Missouri*, 281 U. S. 586; *Farmers Loan & Trust Co. v. Minnesota*, 280 U. S. 204; *Blodgett v. Silberman*, 277 U. S. 1. However, it has been held that a State may allow an unpaid creditor to garnish a debt owing to his debtor wherever the person owing that debt is found. *Harris v. Balk*, 198 U. S. 215. But cf. *New York Life Ins. Co. v. Dunlevy*, 241 U. S. 518.

in question in this case is subject to escheat only by the State of the last known address of the creditor, as shown by the debtor's books and records.¹³

This leaves questions as to what is to be done with property owed persons (1) as to whom there is no record of any address at all, or (2) whose last known address is in a State which does not provide for escheat of the property owed them. The Master suggested as to the first situation—where there is no last known address—that the property be subject to escheat by the State of corporate domicile, provided that another State could later escheat upon proof that the last known address of the creditor was within its borders. Although not mentioned by the Master, the same rule could apply to the second situation mentioned above, that is, where the State of the last known address does not, at the time in question, provide for escheat of the property. In such a case the State of corporate domicile could escheat the property, subject to the right of the State of the last known address to recover it if and when its law made provision for escheat of such property. In other words, in both situations the State of corporate domicile should be allowed to cut off the claims of private persons only, retaining the property for itself only until some other State comes forward with proof that it has a superior right to escheat. Such a solution for these problems, likely to arise with comparative infrequency seems to us conducive to needed certainty and we therefore adopt it.

¹³ Cf. *Connecticut Mutual Life Ins. Co. v. Moore*, 333 U. S. 541. As was pointed out in *Western Union Tel. Co. v. Pennsylvania*, 368 U. S. 71, 77-78, none of this Court's cases allowing States to escheat intangible property decided the possible effect of conflicting claims of other States. Compare *Standard Oil Co. v. New Jersey*, 341 U. S. 428, 443; *Connecticut Mutual Life Ins. Co. v. Moore*, *supra*; *Anderson National Bank v. Lockett*, 321 U. S. 233; *Security Savings Bank v. California*, 263 U. S. 282.

We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and of equity. We believe that the rule we adopt is the fairest, is easy to apply, and in the long run will be the most generally acceptable to all the States.

The parties may submit a proposed decree applying the principles announced in this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 13, ORIGINAL.

State of Texas, Plaintiff,	}	Complaint.
v.		
State of New Jersey et al.		

[February 1, 1965.]

MR. JUSTICE STEWART, dissenting.

I adhere to the view that only the State of the debtor's incorporation has power to "escheat" intangible property when the whereabouts of the creditor are unknown. See *Western Union Tel. Co. v. Pennsylvania*, 368 U. S. 71, 80 (separate memorandum). The sovereign's power to escheat tangible property has long been recognized as extending only to the limits of its territorial jurisdiction. Intangible property has no spatial existence, but consists of an obligation owed one person by another. The power to escheat such property has traditionally been thought to be lodged in the domiciliary State of one of the parties to the obligation. In a case such as this the domicile of the creditor is by hypothesis unknown; only the domicile of the debtor is known. This Court has thrice ruled that where the creditor has disappeared, the State of the debtor's domicile may escheat the intangible property. *Standard Oil Co. v. New Jersey*, 341 U. S. 428; *Anderson Natl. Bank v. Lockett*, 321 U. S. 233; *Security Savings Bank v. California*, 263 U. S. 282. Today the Court overrules all three of those cases. I would not do so. Adherence to settled precedent seems to me far better than giving the property to the State within which is located the one place where we know the creditor is not.

SUPREME COURT OF THE UNITED STATES

No. 13, ORIGINAL.

State of Texas, Plaintiff,
v.
State of New Jersey et al. } Complaint.

[April 26, 1965.]

FINAL DECREE.

This cause having come on to be heard on the Report of the Special Master heretofore appointed by the Court, and the exceptions filed thereto, and having been argued by counsel for the several parties, and this Court having stated its conclusions in its opinion announced on February 1, 1965, 379 U. S. 674, and having considered the positions of the respective parties as to the terms of the decree,

IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Each item of property in question in this case as to which a last-known address of the person entitled thereto is shown on the books and records of defendant Sun Oil Company is subject to escheat or custodial taking only by the State of that last-known address, as shown on the books and records of defendant Sun Oil Company, to the extent of that State's power under its own laws to escheat or to take custodially.

2. Each item of property in question in this case as to which there is no address of the person entitled thereto shown on the books and records of defendant Sun Oil Company is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent of New Jersey's power under its own laws to escheat or to take custodially, subject to the right of any other State to recover such property from

New Jersey upon proof that the last-known address of the creditor was within that other State's borders.

3. Each item of property in question in this case as to which the last-known address of the person entitled thereto as shown on the books and records of defendant Sun Oil Company is in a State, the laws of which do not provide for the escheat of such property, is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent of New Jersey's power under its own laws to escheat or to take custodially, subject to the right of the State of the last-known address to recover the property from New Jersey if and when the law of the State of the last-known address makes provision for escheat or custodial taking of such property.

4. Any relief prayed for by any party to this action which is not hereby granted is denied.

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MOTION FILED

MAY 4 1965

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1964

NO. 13 ORIGINAL

STATE OF TEXAS,

v.

Plaintiff

STATE OF NEW JERSEY, ET AL.,

Defendants

STATE OF FLORIDA,

Intervenor

MOTION FOR CLARIFICATION
AND MODIFICATION OF OPINION

WAGGONER CARR
Attorney General of Texas

HAWTHORNE PHILLIPS
First Assistant

STANTON STONE
Executive Assistant

J. C. DAVIS
Assistant Attorney General

W. O. SHULTZ II
Assistant Attorney General

Box R, Capitol Station
Austin, Texas 78711

Attorneys for Plaintiff

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1964

NO. 13 ORIGINAL

STATE OF TEXAS,

Plaintiff

v.

STATE OF NEW JERSEY, ET AL.,

Defendants

STATE OF FLORIDA,

Intervenor

**MOTION FOR CLARIFICATION
AND MODIFICATION OF OPINION**

NOW COMES the Plaintiff, State of Texas, and respectfully moves the Court to clarify and modify the opinion delivered in connection with this cause on the 1st day of February, 1965, 379 U.S. 674, in the following respects:

I.

By stating that the holder of the funds in question, Sun Oil Company, is subject to the jurisdiction of each of the 48 continental United States;

II.

By modifying the statement of the controversy so as to show that the question to be resolved is not which State has *jurisdiction* to escheat, but rather—which of

the states having jurisdiction has the right to take under its escheat laws.

III.

By stating that the rule formulated by the Court to resolve the controversy in this case has no application where the state of last known address does not have personal jurisdiction of the debtor or holder of the funds.

WAGGONER CARR
Attorney General of Texas

HAWTHORNE PHILLIPS
First Assistant

STANTON STONE
Executive Assistant

J. C. DAVIS
Assistant Attorney General

W. O. SHULTZ II
Assistant Attorney General

Box R, Capitol Station
Austin, Texas 78711

Attorneys for Plaintiff

STATEMENT IN SUPPORT OF MOTION

Plaintiff is constrained to present this Motion to the Court in an effort to ascertain the proper limits of the application of the rule announced by the Court in its opinion. Numerous corporations chartered under Texas laws are presently contending that the opinion of the Court in this case prevents the State of Texas from escheating funds held or owed by them to persons whose last known addresses are outside Texas, regardless of the fact that such corporations neither do business nor are authorized to do business in the state of last known address. Such an application of the rule announced by the Court in its opinion herein would effectively preclude the escheat of such property by any state, since personal jurisdiction of the debtor or holder of the property in question is a prerequisite of escheat. *Provident Savings Institute v. Malone*, 221 U.S. 660, 31 S. Ct. 661, 55 L. Ed. 899 (1911); *Security Savings Bank v. California*, 263 U.S. 282, 44 S. Ct. 108, 68 L. Ed. 301 (1923); *Anderson National Bank v. Lockett*, 321 U.S. 233, 64 S. Ct. 496, 88 L. Ed. 684 (1944); *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951).

The fact that Sun Oil Company is registered to do business in all of the continental States of the United States appears in the record as Stipulation XIV. This case would never have been presented to the Court had Sun Oil Company not been subject to the jurisdiction of the courts of the claiming states. The question posed by this case was not which State had jurisdiction, but rather which of the states having jurisdiction has the right to take the property in question under its escheat laws.

By asking this Court to clarify the opinion in this

cause so as to limit the application of the rule therein announced to those instances in which the debtor or holder of the property sought to be escheated is subject to the jurisdiction of the state of last known address of the owner of such property, Plaintiff merely seeks conformity with the facts in the record and adherence to the concept that the assertion of the escheat laws of a state depend upon personal jurisdiction of the debtor.

Respectfully submitted,

WAGGONER CARR
Attorney General of Texas

HAWTHORNE PHILLIPS
First Assistant

STANTON STONE
Executive Assistant

J. C. DAVIS
Assistant Attorney General

W. O. SHULTZ II
Assistant Attorney General

Box R, Capitol Station
Austin, Texas 78711

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, W. O. Shultz II, Assistant Attorney General of the State of Texas, one of the attorneys for the Plaintiff, State of Texas, in this cause, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ----- day of -----, 1965, I served copies of the Motion for Clarification and

Modification of Opinion, filed by the Plaintiff, on each of the parties to this cause by depositing copies in a United States Post Office or Mail Box as certified mail with air mail postage prepaid and addressed as follows:

Honorable Richard J. Hughes
Governor of New Jersey
State House
Trenton, New Jersey

Honorable Arthur J. Sills
Attorney General of New Jersey
State House
Trenton, New Jersey

Honorable William W. Scranton
Governor of Pennsylvania
State Capitol
Harrisburg, Pennsylvania

Honorable Walter E. Alessandrini
Attorney General of Pennsylvania
State Capitol
Harrisburg, Pennsylvania

Honorable Haydon Burns
Governor of Florida
State Capitol
Tallahassee, Florida

Honorable Earl Faircloth
Attorney General of Florida
State Capitol
Tallahassee, Florida

Honorable Henry A. Frye
Pepper, Hamilton & Scheetz
2001 Fidelity-Philadelphia Trust Building
Philadelphia, Pennsylvania

W. O. SHULTZ II

Assistant Attorney General of Texas

FILE COPY

Office Supreme Court, U.S.
FILED

MOTION FILED MAY 25 1965

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 13 Original

STATE OF TEXAS,

Plaintiff,

vs.

STATE OF NEW JERSEY, *et al.*,

Defendants,

and

STATE OF FLORIDA,

Intervenor.

MOTION FOR MODIFICATION OF FINAL DECREE

ARTHUR J. SILLS,
Attorney General of New Jersey,
Attorney for Defendants,
State House Annex,
Trenton, New Jersey. 08625

ALAN B. HANDLER,
First Assistant Attorney General,

CHARLES J. KEHOE,
Deputy Attorney General,
Counsel for Defendant,
State of New Jersey.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1961

No. 13 Original

STATE OF TEXAS,

Plaintiff,

vs.

STATE OF NEW JERSEY, *et al.*,

Defendants;

and

STATE OF FLORIDA,

Intervenor.

MOTION FOR MODIFICATION OF FINAL DECREE

Defendant, State of New Jersey, respectfully moves the Court to modify the decree entered in this matter on April 26, 1965, in the following respects:

I.

By deleting from paragraph 2 of the said decree the words "subject to the right of any other State to recover such property from New Jersey upon proof that the last known address of the creditor was within that other State's borders."

II.

By deleting from paragraph 3 of the said decree the words "subject to the right of the State of the last known address to recover the property from New Jersey if and when the law of the State of the last known address makes provision for escheat or custodial taking of such property."

(Form of proposed modified decree annexed as Exhibit A.)

In the alternative, New Jersey respectfully moves the Court to modify the said decree in the following respects:

I.

By adding to paragraph 1 a provision that the escheated property may be recovered by any other State for a period of two years upon proof that the last known address of the creditor was within that other State's borders.

II.

By including in paragraphs 2 and 3 a period of limitation that the escheated property can only be recovered from the State of incorporation which escheated same, within a period of two years thereafter.

(Form of proposed modified decree annexed as Exhibit B.)

ARTHUR J. SILLS,
Attorney General of New Jersey,
Attorney for Defendant,
The State of New Jersey.

ALAN B. HANDLER,
First Assistant Attorney General.

CHARLES J. KEHOE,
Deputy Attorney General,
Of Counsel for Defendant.

Preliminary Statement

The defendant Sun Oil Company by letter dated March 11, 1965, submitted to the Clerk of this Court a form of decree which was satisfactory to Sun. A copy of said form of decree is annexed hereto and marked Exhibit C.

By letter dated March 17, 1965, New Jersey informed the Clerk of its objection to the following words in paragraph 3 of the proposed decree "subject to the right of the State of the last known address to recover it from New Jersey if and when its law makes provision for escheat or custodial taking of such property" and requested an opportunity to present fully our position to the Court if the other parties insisted on including the objectionable words in the decree.

By letter dated March 23, 1965, the Clerk informed New Jersey that the proposed decree together with the letters from all of the parties would be presented to the Court and we would be advised. Copies of this correspondence are annexed hereto as Exhibit D.

Without affording New Jersey any further opportunity to present fully its position on the form of the decree, the Court entered its decree on April 26, 1965. The decree is annexed hereto as Exhibit E.

Statement in Support of Motion

This case came within the jurisdiction of the Court when a controversy arose between the States of Texas, New Jersey, Pennsylvania, and Florida. All said States claimed a superior power to escheat or take custody of unclaimed intangibles held by Sun Oil Company, a New Jersey corporation doing business within and subject to the jurisdiction of not only the States who are parties in this litigation but also all other States in the United States.

The controversy which existed between the party States was completely adjudicated by the Court when the decree provided that the State of last known address as shown on the books and records of the corporate holder, Sun Oil Company, had the superior power to escheat or take custody of the unclaimed intangibles held by Sun and if there was no record of a last known address, then the State of incorporation had the superior power to escheat or take custody. At this point the decree achieves "ease of administration and of equity," the paramount influencing factors in the result reached by the Court as indicated by the following statement in the opinion, 379 U. S. 674, 683:

"We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and of equity. We believe that the rule we adopt is the fairest, is easy to apply, and in the long run will be the most generally acceptable to all the States."

By including in paragraph 2 of the decree the words "subject to the right of any other State to recover such property from New Jersey upon proof that the last known address of the creditor was within that other State's borders" and in paragraph 3 the words "subject to the right of the State of the last known address to recover the property from New Jersey if and when the law of the State of the last known address makes provision for escheat or custodial taking of such property," it is respectfully submitted that there is thereby created uncertainty, lack of finality, and administrative difficulties.

Although the State of incorporation by this present decree may prosecute its right of title and possession to the

unclaimed intangibles by a judgment of escheat, it will be unable to rely with certainty upon the judgment of escheat or to use the funds for appropriate State or public purposes. Rather it will have to hold such funds indefinitely because at any time in the future another State under this Court's decree might assert a claim for the escheat of such property. Then there will be no finality with respect to such an escheat action. *A fortiori*, the case where a State of last known address has no escheat law at the time a State of incorporation has diligently escheated property. In such case the former State may undo the escheat proceedings of the latter State by enacting at any future time a law to enable it to escheat. Unnecessary administrative difficulties are thus created by a rule that the State of incorporation after it duly and diligently escheats the property must nevertheless hold the escheated funds indefinitely subject to the claim of the State of last known address at any time thereafter such State sees fit to enact an escheat law. Such absence of finality can only serve to create confusion and chaos. It represents a major departure from the settled rule that there should be finality in judgments. This Court has stated that public policy dictates that there be an end to litigation. *Baldwin v. Iowa State Traveling Mens Asso.*, 283 U. S. 522.

These problems—inevitable under the present decree—may be obviated by the inclusion of a reasonable period of limitations within which a State may undertake to assert a claim for property which has previously been escheated by a State under appropriate proceedings therefor. If the Court should conclude, after review of the motion here presented, that the decree should not be modified as originally recommended, we suggest that there be included in the decree a limitation on the time within which claims may be presented by a State without an escheat law

or a State which seeks to recover on the basis of new evidence relative to the last known address of the creditor.

Another point of concern and confusion in the form of the decree is that the restrictive words permitting a later claim to be made by another State for the escheated property are not included in paragraph 1. Paragraph 1 now provides:

"1. Each item of property in question in this case as to which a last known address of the person entitled thereto is shown on the books and records of defendant Sun Oil Company is subject to escheat or custodial taking only by the State of that last known address, as shown on the books and records of defendant Sun Oil Company, to the extent of that State's power under its own laws to escheat or to take custodially."

In paragraph 2 appear these words, absent in paragraph 1: "subject to the right of any other State to recover such property from New Jersey upon proof that the last known address of the creditor was within that other State's borders"; and in paragraph 3, "subject to the right of the State of the last known address to recover the property from New Jersey if and when the law of the State of the last known address makes provision for escheat or custodial taking of such property." As it is not outside the realm of possibility that at some future time it may be shown that the creditor established an address in a State other than that shown on the records of the corporation, the State of that address would surely be entitled to claim against the State of last known address on the books of the corporation.

The decree should be limited to holding that the State of last known address on the books of the corporation

has the superior power to escheat and where there is no known address on the books of the corporate holder the State of incorporation has the superior right to escheat. Such judgment would be final upon the facts presented in this case or in any like case and the corporate holder need have no concern about double liability. It will be protected by the judgment under the Full Faith and Credit Clause of the Constitution. *Standard Oil Co. v. New Jersey*, 341 U. S. 428. New Jersey urges the Court to adopt the modified form of decree which is annexed hereto as Exhibit A.

This Court has held in this case that a right to recover property herein escheated by the State of incorporation exists in any State which at any future date proves the last known address of the creditor was within that State's borders or that such right to escheat exists inchoate in a State of last known address which does not have an escheat law. The right can be exercised at any future time that such State may enact an escheat law. The rule thus enumerated does not create certainty, finality or ease in the administration of escheat laws. It will, on the contrary, foster conflicts and continuing difficulties in the administration of State escheat laws. It has implications and impacts which were not projected or crystallized in the arguments before the Court and there has been no clear treatment or analysis of the effect of such novel rule as embodied by this decree. To this extent the holding by this Court constitutes an adjudication of a question not fully or clearly presented to the Court in this case and runs contrary to the Court's policy that it will not pass upon abstract issues. *New York v. Illinois*, 274 U. S. 488, 490. At the very least the decree should be modified to include a period of limitations. This, we believe, can be accomplished by a modified form of decree as is annexed hereto as Exhibit B.

CONCLUSION

For the foregoing reasons we respectfully submit that the decree should be modified as herein requested and as set forth in Exhibits A or B.

In the alternative, this Court should grant leave for a hearing on the form of the decree to be entered or should grant leave for the filing of briefs and for argument on the issue of a limitation of time within which a State which has escheated intangibles shall be subject to a claim by another State upon new evidence on the last known address of the creditor or that it is a State of last known address which has now enacted an escheat law.

Respectfully submitted,

ARTHUR J. SILLS,

Attorney General of New Jersey,
Attorney for Defendant,
The State of New Jersey.

ALAN B. HANDLER,

First Assistant Attorney General.

CHARLES J. KEHOE,

Deputy Attorney General,
Of Counsel for Defendant,
State of New Jersey.

Proof of Service

I, CHARLES J. KEHOE, Deputy Attorney General of the State of New Jersey, one of the attorneys for defendant, State of New Jersey, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 24th day of May, 1965, I served copies of the Motion for Modification of Final Decree, or in the Alternative for Additional Argument on each of the other parties to this action by depositing copies in a United States post office or mail box, with first class postage or air mail postage prepaid, and addressed to:

- (1) Honorable Waggoner Carr,
Attorney General of Texas,
Box R, Capitol Station,
Austin, Texas 78711.
- (2) Honorable Walter E. Alexxandroni,
Attorney General of the Commonwealth of Pennsylvania,
State Capitol,
Harrisburg, Pennsylvania.
- (3) Honorable Earl Faircloth,
Attorney General of Florida,
Capitol Building,
Tallahassee, Florida.
- (4) Mr. Henry A. Frye,
Attorney for the Defendant,
Sun Oil Company,
Pepper, Hamilton & Scheetz,
Fidelity-Philadelphia Trust Building,
Philadelphia 9, Pennsylvania.

CHARLES J. KEHOE,
Deputy Attorney General
of New Jersey.

Exhibit "A"

[Words to be removed from the original Decree
are bracketed]

SUPREME COURT OF THE UNITED STATES

No. 13, ORIGINAL

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, *et al.*

COMPLAINT

[April 26, 1965.]

FINAL DECREE

This cause having come on to be heard on the Report of the Special Master heretofore appointed by the Court, and the exceptions filed thereto, and having been argued by counsel for the several parties, and this Court having stated its conclusions in its opinion announced on February 1, 1965, 379 U. S. 674, and having considered the positions of the respective parties as to the terms of the decree,

IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

Exhibit "A"

1. Each item of property in question in this case as to which a last known address of the person entitled thereto is shown on the books and records of defendant Sun Oil Company is subject to escheat or custodial taking only by the State of that last known address, as shown on the books and records of defendant Sun Oil Company, to the extent of that State's power under its own laws to escheat or to take custodially.

2. Each item of property in question in this case as to which there is no address of the person entitled thereto shown on the books and records of defendant Sun Oil Company is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent of New Jersey's power under its own laws to escheat or to take custodially, [subject to the right of any other State to recover such property from New Jersey upon proof that the last known address of the creditor was within that other State's borders.]

3. Each item of property in question in this case as to which the last known address of the person entitled thereto as shown on the books and records of defendant Sun Oil Company is in a State, the laws of which do not provide for the escheat of such property, is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent of New Jersey's power under its own laws to escheat or to take custodially, [subject to the right of the State of the last known address to recover the property from New Jersey if and when the law of the State of the last known address makes provision for escheat or custodial taking of such property.]

4. Any relief prayed for by any party to this action which is not hereby granted is denied.

Exhibit "B"

[Words to be removed from the original Decree are bracketed; new material is italicized.]

SUPREME COURT OF THE UNITED STATES

 No. 13, ORIGINAL

 STATE OF TEXAS,

Plaintiff,

v.

 STATE OF NEW JERSEY, *et al.*

COMPLAINT

[April 26, 1965.]

FINAL DECREE

This cause having come on to be heard on the Report of the Special Master heretofore appointed by the Court, and the exceptions filed thereto, and having been argued by counsel for the several parties, and this Court having stated its conclusions in its opinion announced on February 1, 1965, 379 U. S. 674, and having considered the positions of the respective parties as to the terms of the decree,

IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Each item of property in question in this case as to which a last known address of the person entitled thereto is shown on the books and records of the defendant Sun Oil

Exhibit "B"

Company is subject to escheat or custodial taking only by the State of that last known address, as shown on the books and records of defendant Sun Oil Company, to the extent of that State's power under its own laws to escheat or to take custodially, *subject to the right of any other State, for a period of two years, to recover such property upon proof that the last known address of the creditor was within that other State's borders.*

2. Each item of property in question in this case as to which there is no address of the person entitled thereto shown on the books and records of defendant Sun Oil Company is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent of New Jersey's power under its own laws to escheat or to take custodially, *subject to the right of any other State, for a period of two years, to recover such property from New Jersey upon proof that the last known address of the creditor was within that other State's borders.*

3. Each item of property in question in this case as to which the last known address of the person entitled thereto as shown on the books and records of defendant Sun Oil Company is in a State, the laws of which do not provide for the escheat of such property, is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent of New Jersey's power under its own laws to escheat or to take custodially, *subject to the right of the State of the last known address to recover the property from New Jersey [if and when the law of] for a period of two years if the State of the last known address, within said period, makes provision for escheat or custodial taking of such property.*

4. Any relief prayed for by any party to this action which is not hereby granted is denied.

Exhibit "C"

Draft 3/11/65

IN THE
 SUPREME COURT OF THE UNITED STATES
 OCTOBER TERM, 1961

 No. 13, ORIGINAL

 STATE OF TEXAS,

Plaintiff,

vs.

STATE OF NEW JERSEY, *et al.*,

Defendants.

 FINAL DECREE

This cause having come on to be heard on the Report of the Special Master heretofore appointed by the Court, and the exceptions filed thereto, and having been argued by counsel for the several parties, and this Court having stated its conclusions in its opinion announced on February 1, 1965, and having considered the positions of the respective parties as to the terms of the decree, it is ordered, adjudged and decree as follows:

1. Each item of property in question in this case is subject to escheat or custodial taking only by the State of the

Exhibit "C"

last known address of the person entitled thereto, as shown on the books and records of defendant Sun Oil Company, to the extent provided by and subject to the limitations contained in the law of that State.

2. Each item of property in question in this case as to which there is no address of the person entitled thereto shown on the books and records of defendant Sun Oil Company is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent provided by and subject to limitations contained in the law of that State.

3. Each item or property in question in this case as to which the last known address of the person entitled thereto as shown on the books and records of defendant Sun Oil Company is in a State, the laws of which do not provide for the escheat of such property, is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent provided by and subject to limitations contained in the law of that State, subject to the right of the State of the last known address to recover it from New Jersey if and when its law makes provision for escheat or custodial taking of such property.

4. Any relief prayed for by any party to this action which is not hereby granted is denied.

Exhibit "D"

Tel. No. (Centrex)
292-4670

March 17, 1965

Honorable John F. Davis, Clerk
Supreme Court of the United States
Supreme Court Building
Washington, D. C. 20543

Texas v. New Jersey, et al. No. 13
Original, October Term, 1961

Dear Mr. Davis:

We have received a copy of letter, dated March 11, 1965, sent to you by the defendant, Sun Oil Company, together with a copy of the proposed form of decree.

New Jersey contends that the following words "subject to the right of the State of the last known address to recover it from New Jersey if and when its law makes provision for escheat or custodial taking of such property" should not be included in paragraph 3. We feel that the claim of any address State which does not presently have an escheat law was not before the Court. To include such language in the decree might be construed as a judgment in favor of such state even though it was not a party to the proceedings and might not enact an escheat law until the year 2000. No controversy exists between such State and New Jersey. Heretofore where no such controversy existed, this Court refused to take jurisdiction. *State of New York v. State of New Jersey*, 358 U. S. 924.

In addition, the result reached by the Court in this case is based upon case of administration and equity. To per-

Exhibit "D"

mit words in the decree which might indicate a right in an address State to claim escheated funds from a domicile State at any time after said funds have been escheated would not only cause a substantial administrative burden, it would also be inequitable. Undoubtedly, the escheated funds will have been used to pay the costs of government and the citizens should not then be expected to bear a tax burden to pay out escheated funds.

If the other parties insist on including in the decree the words herein objected to, we request an opportunity to fully present our position to the Court.

Very truly yours,

CHARLES J. KEHOE

Deputy Attorney General and
Supervisor of Escheats

CJK:mmmb

cc: Augustus S. Ballard, Esq.
W. O. Shultz, II, Esq.
Fred M. Burns, Esq.
Joseph H. Resnick, Esq.

Exhibit "D"

Office of the Clerk

SUPREME COURT OF THE UNITED STATES
Washington, D. C., 20543

March 23, 1965

The Honorable Charles J. Kehoe
Deputy Attorney General and
Supervisor of Escheats
State House Annex
Trenton, New Jersey 08625

Re: Texas v. New Jersey, et al.
No. 13 Original

Dear Sir:

I have your letter of March 17 wherein you set out your objections to the proposed decree submitted by the Sun Oil Company in the above-entitled case.

The proposed decree, together with the letters from all of the parties, will be presented to the Court and you will be advised.

Very truly yours,

JOHN F. DAVIS
Clerk

> By E. P. CULLINAN
E. P. Cullinan
Chief Deputy

EPC:jmh

Exhibit "E"

SUPREME COURT OF THE UNITED STATES

No. 13, ORIGINAL

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW JERSEY, *et al.*

COMPLAINT

[April 26, 1965.]

FINAL DECREE

This cause having come on to be heard on the Report of the Special Master heretofore appointed by the Court, and the exceptions filed thereto, and having been argued by counsel for the several parties, and this Court having stated its conclusions in its opinion announced on February 1, 1965, 379 U. S. 674, and having considered the positions of the respective parties as to the terms of the decree,

IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Each item of property in question in this case as to which a last known address of the person entitled thereto is shown on the books and records of the defendant Sun Oil

Exhibit "E"

Company is subject to escheat or custodial taking only by the State of that last known address, as shown on the books and records of defendant Sun Oil Company, to the extent of that State's power under its own laws to escheat or to take custodially.

2. Each item of property in question in this case as to which there is no address of the person entitled thereto shown on the books and records of defendant Sun Oil Company is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent of New Jersey's power under its own laws to escheat or to take custodially, subject to the right of any other State to recover such property from New Jersey upon proof that the last known address of the creditor was within that other State's borders.

3. Each item of property in question in this case as to which the last known address of the person entitled thereto as shown on the books and records of defendant Sun Oil Company is in a State, the laws of which do not provide for the escheat of such property, is subject to escheat or custodial taking only by New Jersey, the State in which Sun Oil Company was incorporated, to the extent of New Jersey's power under its own laws to escheat or to take custodially, subject to the right of the State of the last known address to recover the property from New Jersey if and when the law of the State of the last known address makes provision for escheat or custodial taking of such property.

4. Any relief prayed for by any party to this action which is not hereby granted is denied.